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Agriculture development and food security

Agriculture development and food security

Report of the Secretary-General

Summary

Two years after the 2008 food crisis, food insecurity persists in 29 countries worldwide, and more than one billion people remain hungry or undernourished. However, concerted efforts by the global community to coordinate actions for food and nutrition assistance and to provide increased resources for sustainable agricultural development, along with country-led policy initiatives that include farmers' organizations and are supported by regional and international strategies, have contributed to stronger social safety nets and improved support for smallholder farmers.

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I. Introduction

1. The present report has been prepared in response to the request made by the General Assembly in its resolution 64/224 that the Secretary-General submit to the Assembly at its sixty-fifth session a report on developments related to global efforts to address agriculture development and food security, including progress in implementing the outcome of the World Summit on Food Security, under the item entitled "Agriculture development and food security".

2. The report benefited from inputs received from the Secretary-General's High-level Task Force on the Global Food Security Crisis, including reports of the Senior Steering Group of the Task Force. The information and analysis presented in the *Updated Comprehensive Framework for Action* developed by the Task Force in July 2010, the *Organization for Economic Cooperation and Development-Food and Agriculture Organization of the United Nations Agricultural Outlook 2010-2019*, and the views and recommendations of African farmers' organizations in the context of the Comprehensive Africa Agriculture Development Programme (CAADP), compiled by the International Fund for Agricultural Development (IFAD), contribute additional substance. The follow-up actions by Governments and other stakeholders aimed at implementing the decisions taken during the seventeenth session of the Commission on Sustainable Development pertaining to agriculture and rural development also inform the report.

3. Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life. Food insecurity exists when people do not have adequate physical, social or economic access to food as defined above. Food security therefore covers availability, access, utilization and stability issues, and, because of its focus on the characteristics of individuals, also encompasses the energy, protein and nutrient requirements for life, activity, pregnancy, growth and long-term capabilities.

II. Agriculture and food security situation

4. Following the food and financial crises, the Food and Agriculture Organization of the United Nations (FAO) and the World Food Programme (WFP) reported in their 2009 publication *The State of Food Insecurity in the World*[1] that for the first time since 1970 more than one billion people were hungry or undernourished worldwide — in other words, that about one sixth of all of humanity suffered from a lack of food security.

5. Several factors converged to make 2009 a particularly damaging year for people at risk of food insecurity. The food crisis had pushed the prices of basic staples beyond the reach of millions of poor people. Many families were especially vulnerable to the rising prices, as they were net food buyers. The price increases forced many poor families to make compromises, such as replacing more nutritious food with food that is less nutritious, selling productive assets, withdrawing children from school, forgoing health care or education, or simply eating less. While the food

[1] FAO, *The State of Food Insecurity in the World*, Rome, 2009; available at http://www.fao.org/docrep/012/i0876e/i0876e00.HTM.

price index for 2009 was on average 17 per cent lower than the 2008 average, prices remained 11 per cent higher than in 2007. While the global focus on food prices has waned, domestic staple food prices in several countries experienced double-digit increases in 2009, in particular in sub-Saharan Africa, where a sample of 55 countries covered by the FAO domestic food price survey shows that some countries have experienced the largest price increases in staples in their local markets. The impact on undernourishment, or hunger, has been estimated at nearly 8 per cent in 2009.[2]

6. The world financial crisis reduced the capacity of finance ministers in the least developed countries to respond to the needs of their poorer populations. Many countries experienced across-the-board drops in their trade and financial inflows and saw reductions in their export earnings, inward investment by foreign enterprises, receipts of development aid, remittances from citizens living abroad and income from taxes. Fortunately, Governments are responding to the crisis by investing in agriculture and infrastructure and expanding safety nets.

A. Overview of the current status

7. The FAO publication *Crop Prospects and Food Situation* (May 2010) projects that food prices in developing countries will remain above the pre-crisis level of early 2008, negatively affecting access to food by vulnerable populations. Furthermore, food difficulties persist in 29 countries worldwide, particularly in the Niger, Chad and other Sahelian countries of West Africa, where food assistance is needed for the 2009-2010 marketing season.[3]

8. The *OECD-FAO Agricultural Outlook 2010-2019* reports that international commodity prices are anticipated to be higher on average in the next decade, compared with the decade preceding the price spike of 2007-2008. This forecast is based on the resumption of economic growth, above all in developing countries; increased demand due to rising biofuels production; and anticipated higher costs of energy-related inputs. Average wheat and coarse-grain prices are projected to be nearly 15 to 40 per cent higher in real terms relative to 1997-2006, while for vegetable oils real prices are expected to be more than 40 per cent higher. For livestock products, average meat prices in real terms, other than for pig meat, are expected to surpass the 1997-2006 average in the coming decade, initially owing to lower supplies, higher feed costs and rising demand. Average dairy prices in real terms are expected to be 16 to 45 per cent higher in 2010-2019 relative to 1997-2006, with butter prices showing the greatest gains, followed by energy and vegetable-oil prices. As shown in figure I, real commodity prices are projected to remain below recent peaks but well above those of the previous decade.[4]

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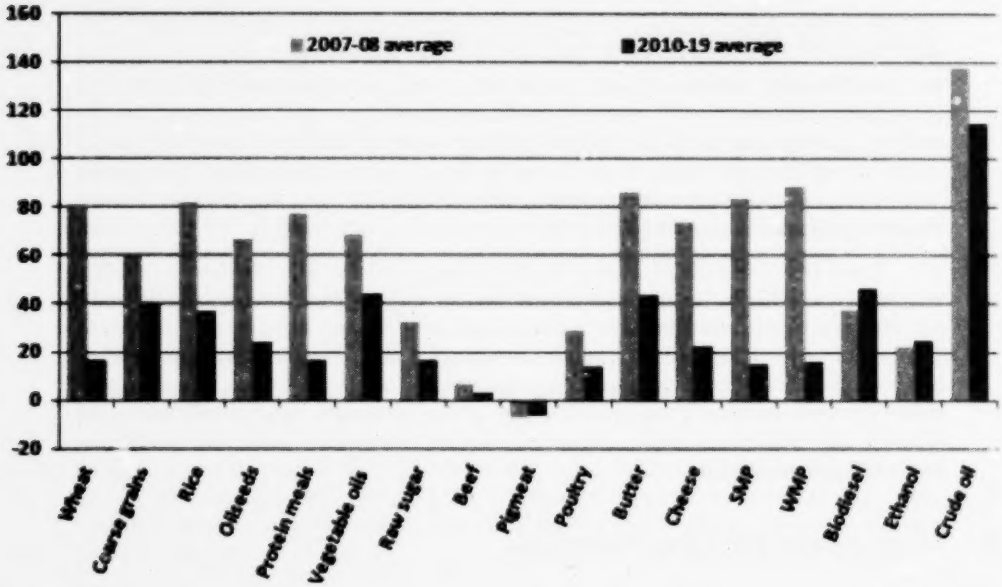
[2] World Bank, Food Price Watch, February 2010; available at http://siteresources.worldbank.org/INTPOVERTY/Resources/335642-1210859591030/FINAL_Food_Price_Watch_Feb2010.pdf.

[3] Global Information and Early Warning System, "Crop Prospects and Food Situation", No. 2, May 2010. http://www.fao.org/docrep/012/ak347e/ak347e00.pdf.

[4] *OECD-FAO Agricultural Outlook 2010-2019*, available at http://www.agri-outlook.org/dataoecd/13/13/45438527.pdf.

Figure I
Real commodity prices, 2007-2008 and 2010-2019 (projected)



9. The *Outlook* net production index[5] provides a summary measure of the growth in the gross value of production of all commodities included in the report, net of seed and feed costs which are internal to the sector, all measured at constant international reference prices of 2004-2006. Brazil is the fastest-growing agricultural sector by far, projected to grow by over 40 per cent until 2019, compared with the 2007-2009 base period. The Russian Federation and Ukraine are projected to grow 26 per cent and 29 per cent, provided that the plans made and support measures taken by the respective Governments proceed as indicated and bear fruit, marking a significant recovery in production levels.

10. China and India may also grow significantly, by 26 and 21 per cent, respectively. While Australia is projected to grow some 17 per cent, such growth reflects an assumed return to more normal yields; over a longer period of comparison, Australian production by 2019 will be only some 7 per cent higher than in 2000. Production growth in the United States of America and Canada is projected to be in the 10 to 15 per cent range over the same period.

11. In contrast, over the same period, net agricultural output in the 27 member countries of the European Union will have grown less than 4 per cent. These diverse trends reflect important developments in those countries which may be generating or inhibiting growth.

12. By region, production measures, on a per capita basis, provide an interesting viewpoint on longer-term developments in global agriculture and their potential implications for food supplies. Per capita output has fallen in North Africa and the

[5] Ibid.

Middle East, owing largely to limited water availability and the policies adopted by certain countries, such as Saudi Arabia, aimed at reducing highly subsidized wheat production. Production in the sub-Saharan region of Africa is expected to be stagnant in per capita terms, as production is barely keeping pace with population growth, which still averages around 2.2 per cent per year.

13. In Western Europe, production is also stagnant. Requirements related to growth in consumption on a per capita basis in this region will need to be met by imports. Latin America is the fastest-growing production region; however, in per capita terms, Eastern Europe is the fastest-growing, because projections assume that in that region, population numbers will actually decline by more than 3 per cent over the projected period of 2010-2019.

14. Trade flows and trade patterns in agricultural products also continue to evolve, with increased South-South trade in addition to the traditional North-South trade. On the import side, the developing countries are becoming increasingly integrated into world agricultural trade and regional markets. Other countries, including China, that have a well-established presence in international markets are seeking to diversify their sources of supply, resulting in new economic interactions and trade between developing and other countries that are effectively reshaping worldwide flows of agricultural trade.[6]

B. Ongoing and emerging challenges

15. The food and financial crises demonstrated that the structure and functioning of food markets was too fragile to withstand the impact of successive shocks. This reflects a history of inappropriate policies on effective land use and food production; decades of under-investment in agriculture (particularly smallholder-based production and processing systems), rural development and infrastructure; inconsistent attention to the effective operation of markets for food; and lack of support for safety nets and social protection systems.

16. Despite the recent fallback in world prices, domestic food prices and price volatility remain high. Poorer people are particularly affected by fluctuations in the prices of food as well as in the costs of inputs and transport. High price volatility complicates farmers' choices of which crops to grow and what type of livestock to purchase, resulting in increased levels of food insecurity among poor people. Volatility also undermines confidence in global systems with respect to maintaining prices and securing supplies in times of need.

17. The crises highlighted the vulnerability of the nearly half a billion small-scale food producers and the millions of waged agricultural workers involved in agriculture, and of poor people who live in urban areas. Vulnerabilities are particularly pronounced in countries experiencing, or recovering from, breakdowns in political systems, including civil strife or warfare. The capacity of smallholder farms to grow more food is constrained because they lack access to soil and water management practices that are adapted to their eco-ecological zone and cannot

[6] Ibid.

afford quality seeds[7] or inputs such as fertilizer, veterinary drugs[8] and services. This can result in an expansion of the area used for agriculture to less suitable lands, with severe consequences for the ecosystems around the community.

18. The vulnerability of women farmers, who are responsible for about half of food production worldwide and 60 to 80 per cent in most developing countries, has also become increasingly visible. Such women constitute the majority of smallholder farmers in developing countries. Despite the significant contribution made by women to food production, their ability to ensure food and nutrition security within their households and communities is impeded by their lack of access to land, technology, training and extension services, marketing services and credit. Inequalities are exacerbated by biases in development policies, discriminatory legislation, long-standing traditions and lack of access to decision makers.

19. While interest has grown among Governments and private investors in acquiring land in third countries for staple food and other agricultural commodities, a 2010 study on large land acquisitions in Africa[9] highlights a number of misconceptions about what have been termed "land grabs". It found that land-based investment has been rising over the past five years, but that while foreign investment dominates, domestic investors are also playing a major role in land acquisitions. Large-scale land claims involve only a small proportion of arable land in any one country, but, contrary to widespread perception, there is very little "empty" land, as most remaining suitable land is already under use or claim, often by local people.

20. Overall, the crises have exposed the inadequacy of the current systems and institutions, including those that govern world food trade, to respond to the needs of poor people affected by substantial shocks and highlight the need for improved global governance of world food security. At the national level, anxiety about high food prices and intense competition over land, water and transport capacity have already increased the risks of civil unrest, political instability, the displacement of people and migration across borders. Continued food price volatility, which is increasingly tied to unstable energy prices, and a lack of infrastructure for market access tend to increase risks to profitability and livelihoods, especially of smallholder farmers. Pressure on the environment, including from the impacts of climate change and increasingly frequent extreme weather events on agricultural production and food systems, will tend to increase the risks of food insecurity in coming decades and add to the demands for humanitarian action and capacity-building for adaptation.

21. Finally, the continued expansion of biofuels production to meet mandated uses will create additional demand for maize, wheat, coarse grains, vegetable oils and sugar used as feedstocks. Biofuels markets depend heavily on government incentives and mandates, but prospects remain uncertain, owing to unpredictable

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[7] Quality seed can be of scientifically bred varieties but also of local farmer varieties or landraces, depending on what is most appropriate and cost-effective under the circumstances.

[8] In many countries, animals are an important source of power for ploughing, harvesting and transport, and of food and nutrition. Animals can also serve as an informal means of saving and generating cash for input, investment and food purchases.

[9] FAO and the International Institute for Environment and Development, *Making the most of agricultural investment: A survey of business models that provide opportunities for smallholders*, 2010, available at http://www.iied.org/pubs/pdfs/12566IIED.pdf.

factors such as future trends in crude oil prices, changes in policy interventions and developments in second-generation technologies.[4]

III. Responding to the food security crisis and agricultural development challenges

A. Actions taken at the global level

22. The food crisis of 2008 served as a catalyst for an unprecedented level of global action to provide emergency food aid and revitalize the agriculture sector. Following the establishment of the High-level Task Force on the Global Food Security Crisis and its Comprehensive Framework for Action in July 2008, the L'Aquila Food Security Initiative, established in July 2009, helped to increase the necessary resources in the lead-up to the 2009 World Summit on Food Security, at which the Rome Principles were adopted and FAO undertook a fundamental reform of its Committee on World Food Security.

23. The present section provides a brief update on these and other international efforts to mobilize a coordinated response to the crisis and address the underlying weaknesses in the agricultural sectors of the most vulnerable countries. Of particular interest this year is the increased focus on nutrition across the spectrum of efforts to address food security.

High-level Task Force on the Global Food Security Crisis

24. The High-level Task Force on the Global Food Security Crisis works to ensure the coherence of policies, action and the delivery of results among United Nations system agencies, international financial institutions and their partners in support of comprehensive food security strategies that are country-owned and country-driven.[10] The Task Force is working towards the implementation of the Comprehensive Framework for Action, which outlines a twin-track approach to meeting the immediate needs of the most vulnerable while fostering the longer-term sustainable development of the agricultural sector in more than 60 countries.

25. The 22 members of the High-level Task Force[11] have collectively committed in excess of $2 billion of their own funds and mobilized in excess of $6 billion to relieve the impact of soaring food prices in over 90 countries. They have contributed to improved donor coordination, aid alignment and harmonization, with a view to ensuring predictable, efficient and effective responses at the country level. They

[10] Information on the Task Force and its members is available at: http://www.un-foodsecurity.org/.

[11] FAO, IFAD, the International Labour Organization, the International Monetary Fund, the Office of the United Nations High Commissioner for Refugees, the Organization for Economic Cooperation and Development, the Special Adviser on the Millennium Development Goals, the United Nations Children's Fund, the United Nations Conference on Trade and Development, the Department of Economic and Social Affairs, the Department of Peacekeeping Operations, the Department of Political Affairs, the Department of Public Information, the United Nations Development Programme, the United Nations Environment Programme, the Office for the Coordination of Humanitarian Affairs, the Office of the United Nations High Commissioner for Human Rights, the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, the World Bank, WFP, the World Health Organization and the World Trade Organization.

have supported smallholder farmer food production, benefiting approximately 5 per cent of the world's 2 billion smallholder farming families; supported more than 15 Governments in their fiscal and tax policy responses to increased food prices by providing guidance and financial resources so as to limit a possible second-round impact of price rises on inflation; and helped to significantly mitigate the macroeconomic challenges faced by poorer countries as a result of volatile food prices.[12]

Updated Comprehensive Framework for Action

26. The Comprehensive Framework for Action initially prioritized the interests of smallholder farmers, especially women, helping them to obtain the agricultural inputs they need in a predictable way, enabling them to increase their share of the value derived from their produce as it is stored, transported, processed and marketed, and ensuring that they are supported during periods when access to specific nutrients is compromised. Over the past year, the importance of nutritional security has become more widely accepted, in view of evidence showing that even when communities experience increases in their overall food production, the prevalence of undernourished children remains high.[13] As the Framework's emphasis on comprehensive approaches has become more relevant, policymakers have recently sought ways to link agriculture, food security and nutritional outcomes.

27. In May 2010, a dialogue on the Comprehensive Framework for Action provided an opportunity for interested parties to engage with the resource group responsible for updating the Framework, and offer suggestions on its contents and presentation. More than 150 representatives of international and regional organizations; non-governmental organizations; smallholder farmers organizations from Africa, Asia, the Americas and Europe; and Member States contributed to a process designed to produce an updated Comprehensive Framework for Action that is more adapted to today's realities and takes into account the full spectrum of actions needed to achieve food and nutrition security for all.

28. The discussion among stakeholders was based on a draft version of the Updated Comprehensive Framework for Action that reflected comments received on the original Framework from 51 entities,[14] and participants welcomed the opportunity to broaden the overall scope of the Framework and emphasize the role of women, nutrition and the right to food.[15] They also called for increased attention to be devoted to the defects underlying the structures of the world's food systems, including the failure of agricultural development to reflect the interests of smallholder farmers and agricultural labourers in many less developed nations, the poor performance of conventional food markets, the damage caused by ongoing volatility in prices of food and agricultural inputs, the adverse impact of speculation

[12] High-level Task Force progress report, November 2009, available at http://un-foodsecurity.org/sites/default/files/09progressreport.pdf.

[13] High-level Task Force, Updated Comprehensive Framework for Action, Dublin Draft, May 2010, foreword, available at http://un-foodsecurity.org/sites/default/files/2010_CFA_updatd_web_lowres-1.pdf.

[14] Available at www.updatecfa.com.

[15] The right to adequate food and the fundamental right to be free from hunger are recognized under article 25 of the Universal Declaration of Human Rights and under article 11 of the International Covenant on Economic, Social and Cultural Rights.

on food commodities, the debilitating nature of unfair food subsidy and trading practices, and the fragility of global mechanisms for food governance.

29. The draft Updated Comprehensive Framework for Action produced from this consultative process was published in May 2010. It is still based on a twin-track approach, but includes a wider range of views and a fuller treatment of all aspects of food and nutrition security. It reflects the outcomes of the World Food Summit, including the five Rome Principles. It takes into account the need to accord greater priority to the protection of those who are least able to enjoy their rights to food, environmental sustainability, gender equity and the prerequisites for improved nutrition. It acknowledges that while States have a primary role in ensuring food and nutrition security for all, a multiplicity of other actors have vital contributions to make.[13]

L'Aquila Food Security Initiative

30. The L'Aquila Food Security Initiative established by the Group of Eight (G-8) in July 2009 pledged $20 billion towards efforts to "partner with vulnerable countries and regions to help them develop and implement their own food security strategies, and together substantially increase our commitments of financial and technical assistance".[16] Supported by the leaders of 26 countries and 14 organizations, including the High-level Task Force on the Global Food Security Crisis, the Committee on World Food Security, FAO, the World Food Programme (WFP), the World Bank and the Consultative Group on International Agricultural Research, the initiative identifies food security, safety nets, nutrition and sustainable agriculture as being political imperatives to be pursued within an evolving context of supply uncertainties and price volatility.

31. The L'Aquila Food Security Initiative links food and nutrition security to climate change adaptation and mitigation measures; sustainable natural resource management, including biodiversity protection; responses to the interests of women farmers and their communities; and social protection systems that ensure that the most vulnerable have access to food and nutrients. Importantly, the Initiative envisages strong multilateral action in support of country-led processes that are driven by national authorities with increased levels of financial assistance that are both sustained and predictable. It also calls for effective coordination among all stakeholders.

32. The L'Aquila Food Security Initiative works as a part of the Global Partnership for Agriculture, Food Security and Nutrition, a global partnership that was originally proposed to address the issues of agriculture and food in 2008 and was later expanded to include food security and nutrition at the High-level Meeting on Food Security for All, held in Madrid in January 2009. As discussions on the Global Partnership continued at the FAO conference held in November 2008, the G-8 L'Aquila Summit in July 2009 and at the Group of Twenty (G-20) Summit held in Pittsburgh in September 2009, the Partnership continues to develop and is contributing to the work of the reformed Committee on World Food Security.

33. In November 2009, representatives of private-sector companies involved in the Global Partnership met in Milan and indicated their capacity to help increase farmer productivity and their wish to help smallholders derive benefits from quality

[16] Available at www.ifad.org/events/g8.

improvements, processing and marketing. That led to the development of a New Vision for Agriculture,[17] led by a Project Board selected from the World Economic Forum (WEF) Consumer Industries Community, with advisory support from the Forum's Global Agenda Council on Food Security and high-level leaders of industry, Governments, academic institutions and civil society. The New Vision for Agriculture was formally established in 2010 with the purpose of deepening public-private collaboration so as to accelerate growth in sustainable agriculture.

Global Agriculture and Food Security Programme

34. On the basis of discussions held on a global food security initiative in L'Aquila, leaders at the G-20 summit held in September 2009 decided to call on the World Bank Group to work with interested donors and organizations to develop a multilateral trust fund to scale up agricultural assistance to low-income countries.[18] The Global Agriculture and Food Security Programme was subsequently established at the World Bank in April 2010 as a fiduciary intermediary fund that seeks to help countries in their quest to ensure the long-term growth and sustainability of smallholder farms. It currently holds approximately $950 million in secure pledges, with contributions from Spain, Canada, the United States, the Bill and Melinda Gates Foundation and the Republic of Korea, and it is expected that a total of $1 billion to $1.5 billion will be received over the next three years.

35. Several other initiatives continue to help in improving the mobilization and coordination of official development assistance (ODA) in support of food and nutrition security: the World Bank's Global Food Crisis Support Programme, a $2 billion initiative launched in 2008 to mitigate the initial shock of high food prices on vulnerable groups, and the European Union Food Security Facility, which has committed €1 billion to projects worldwide, working through the United Nations, the World Bank and non-governmental organizations.[19]

Outcomes of the World Summit on Food Security

36. In November 2009, FAO convened the World Summit on Food Security at its headquarters in Rome, which was attended by 60 Heads of State and Government and 192 Ministers from 182 countries and the European Community. Participants unanimously adopted a Declaration pledging a renewed commitment to fight hunger and embracing the five L'Aquila principles, newly coined as the "Rome Principles". FAO members endorsed the revitalization of the Committee on World Food Security so as to make it a more inclusive international platform.

37. A number of events were held in the month prior to the Summit, and their outcomes contributed to the success of the Summit itself. FAO organized a high-level expert forum on the theme "How to feed the world in 2050", the Committee on World Food Security met over a four-day period to discuss its reforms, and World Food Day was held on 16 October. Additionally, in the days just before the Summit, a private-sector forum was convened in Milan, and both an inter-parliamentary

[17] See http://www.weforum.org/en/initiatives/AgricultureandFoodSecurity/index.htm.

[18] See http://www.worldbank.org/gafsp.

[19] High-level Task Force Updated Comprehensive Framework for Action, Dublin Draft, May 2010, p. 44, available at http://un-foodsecurity.org/sites/default/files/2010_CFA_updatd_web_lowres-1.pdf.

meeting and a civil society forum[20] were convened in Rome, to provide their views and input for the discussions.

38. The Declaration of the World Summit on Food Security includes four strategic objectives: (a) to fully realize the targets of Millennium Development Goal 1 and the 1996 World Food Summit goal;[21] (b) to work within the Global Partnership for Agriculture, Food Security and Nutrition and fully implement the reform of the Committee on World Food Security; (c) to reverse the decline in domestic and international funding for agriculture, food security and rural development in developing countries, and promote new investment to increase sustainable agricultural production and productivity, reduce poverty and work towards achieving food security and access to food for all; and (d) to proactively face the challenges posed by climate change to food security and to increase the resilience of agricultural producers to climate change, with particular attention to small agricultural producers and vulnerable populations.

39. To achieve the agreed strategic objectives as defined above, World Summit leaders decided to base their commitments and actions on what they declared as the Five Rome Principles for Sustainable Global Food Security:

(a) Invest in country-owned plans, aimed at channelling resources to well-designed and results-based programmes and partnerships;

(b) Foster strategic coordination at the national, regional and global levels to improve governance, promote the better allocation of resources, avoid duplication of efforts and identify response gaps;

(c) Strive for a comprehensive twin-track approach to food security that consists of: (1) direct action to immediately tackle hunger for the most vulnerable and (2) medium- and long-term sustainable agricultural, food security, nutrition and rural development programmes to eliminate the root causes of hunger and poverty, including through the progressive realization of the right to adequate food;

(d) Ensure a strong role for the multilateral system by sustained improvements in the efficiency, responsiveness, coordination and effectiveness of multilateral institutions;

(e) Ensure sustained and substantial commitment by all partners to investment in agriculture and food security and nutrition, with the provision of necessary resources in a timely and reliable fashion, aimed at multi-year plans and programmes.

40. Faced with the food crisis and an underperforming Committee on World Food Security, FAO member States agreed at the thirty-fourth session of the Committee, held in October 2008, to embark on a reform, aimed at enabling the Committee to realize its vital role in the area of food security and nutrition, including international coordination. The reformed Committee is expanding participation so as to ensure that the voices of all relevant stakeholders are heard in the policy debate on food and agriculture; adapting its rules and procedures with the aim of becoming the central United Nations political platform dealing with food security and nutrition; strengthening its linkages at the regional, national and local levels; and supporting

[20] See http://peoplesforum2009.foodsovereignty.org/.

[21] To reduce, respectively, the proportion and the number of people who suffer from hunger and malnutrition by half by 2015.

Committee discussions with structured expertise through the creation of a High-level Panel of Experts to ensure that the decisions and the work of the Committee are based on hard evidence and state-of-the-art knowledge.[22]

41. The Committee on World Food Security remains an intergovernmental Committee in FAO, with an advisory group including FAO, WFP, IFAD, the Gates Foundation, the High-level Task Force on the Global Food Security Crisis, the High-level Panel of Experts, and other private, research, philanthropic and financial institutions. As a central component of the evolving Global Partnership for Agriculture, Food Security and Nutrition, the reformed Committee envisions that it will constitute the foremost inclusive international and intergovernmental platform for a broad range of committed stakeholders to work together in a coordinated manner and in support of country-led processes towards the elimination of hunger and ensuring food security and nutrition for all human beings.

42. At the same time, the Consultative Group on International Agricultural Research (CGIAR) and the Global Forum on Agricultural Research are being reformed to represent and respond better to the interests of farmers in poorer countries, and deliver new insights and technologies that benefit them.

Implementing the decisions taken by the Commission on Sustainable Development at its seventeenth session

43. Following the outcome of the seventeenth session of the Commission on Sustainable Development, held in 2009, the Division for Sustainable Development of the Department of Economic and Social Affairs decided to closely monitor the implementation of the agreed decisions related to agriculture, rural development, land, drought, desertification and Africa by organizing a Multi-stakeholder Dialogue on Implementing Sustainable Development, which convened in February 2010 at Headquarters in New York. That was the first time that such a dialogue was organized outside the regular session of the Commission on Sustainable Development.

44. The dialogue was held in the spirit of ensuring a more effective and coordinated implementation of the decisions made at the seventeenth session and raised awareness about innovative methods and tools for strengthening the capacities of farmers and promoting the need to develop partnerships. There was a general consensus during the daylong discussion on the need to develop a fast-track strategy to advance the implementation of the Commission's decisions in general and for the scaling up of successful practices in particular.[23]

45. A notable example of partnerships highlighted during the multi-stakeholder dialogue was the Farming First coalition, a group of 131 civil society organizations representing farmers, scientists, engineers and industry. It was developed in response to the challenges presented at the seventeenth session of the Commission, and illustrates the value of multi-stakeholder collaboration, as it acknowledges the specific concerns of each of those sectors while building consensus and a common

[22] FAO Committee on World Food Security, thirty-fifth session, Rome, October 2009; agenda item III: Reform of the Committee on World Food Security (CFS:2009/2), available from http://www.fao.org.

[23] The summary report is available at http://www.un.org/esa/dsd/resources/res_pdfs/csd-18/csd18_2010_bp14.pdf.

framework for future action. Governments welcomed the Farming First initiative, noting its potential to raise awareness about the collective contributions of some of the most important agricultural and rural stakeholders, namely, farmers and cooperatives, researchers and extension workers, companies and entrepreneurs.[24]

Scaling up Nutrition Framework

46. One important extension of the global effort to increase food security over the past year has been an increased awareness of the problem of undernutrition and the neglect of the issue of nutrition in development strategies. Few Governments have sought to prioritize undernutrition as a development problem in their national development plans, and of those that do, only half have actually included budget allocations for explicit nutrition activities. One reason for this omission is that neither the economic consequences of undernutrition, nor the comparatively low cost of acting to prevent them, are well recognized.[25] In 2010, more stakeholders are putting the issue of nutrition higher on the agenda, and there has been increasing political interest in a multipartner initiative for tackling undernutrition.

47. In response, a policy brief entitled "Scaling-up Nutrition: A Framework for Action" was published in 2010, as the product of a broad informal partnership and intensive programme of work that included a series of consultations hosted by the Centre for Global Development, the International Conference on Nutrition, the United Nations Standing Committee on Nutrition, the United States Agency for International Development, the United Nations Children's Fund and the World Bank; many developing country partners, civil society organizations, bilateral partners, the United Nations and multilateral agencies were also involved.

48. The Scaling up Nutrition Framework calls for two complementary approaches to reducing undernutrition. The first involves direct, nutrition-specific interventions focusing on pregnant women and children under age 2 using short-term direct interventions that are known to be effective, such as the promotion of good nutritional practices, micronutrients and complementary feeding to prevent and treat undernutrition. The second approach is a broader multisectoral nutrition-sensitive approach to development that acts to counter the determinants of undernutrition, specifically by promoting agriculture and food security to improve the availability of, access to and consumption of nutritious foods by improving social protection and by ensuring access to health care.

49. The policy brief is designed as a public good that describes the interventions that must be implemented at near to universal coverage to achieve a public health impact, and its policies will continue to evolve through future consultation meetings hosted by the World Health Organization and WFP. A meeting of stakeholders involved in the Framework was held at the Nutrition Forum held in Rome in June 2010, at which participants agreed to develop an action plan that responded both to the needs of populations at risk and to the interests of all stakeholders in the Framework process. The first phase of the action plan will take the form of a road map setting out pathways for moving forward and will be reviewed by stakeholders before the summit on the Millennium Development Goals.

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[24] See http://www.farmingfirst.org/.

[25] Policy brief, *Scaling Up Nutrition: A Framework for Action*, David Nabarro, Special Representative of the Secretary-General for Food Security and Nutrition (revised April 2010), available at http://un-foodsecurity.org/node/529.

High-level review of the implementation of the Millennium Development Goals

50. In September 2010, the General Assembly will convene the summit on the Millennium Development Goals, a High-level Plenary Meeting whose primary objective will be to accelerate progress towards all the Millennium Development Goals by 2015, taking into account the progress made towards the internationally agreed development goals (see resolution 64/184). The summit is expected to undertake a comprehensive review of successes, best practices and lessons learned; identify obstacles, gaps, challenges and opportunities; and produce concrete strategies for action.

51. By linking the Millennium Development Goals to the internationally agreed development agenda, world leaders and development partners have recognized the existence of synergies among the various development goals and targets as well as the need for an integrated approach to their achievement. Agriculture development and food security are closely tied to both Goal 1 and Goal 7, and, as momentum builds towards the summit, many activities are under way to ensure that the importance of food security is appropriately reflected and that a comprehensive approach to sustainable agriculture, food security and nutrition is promoted as part of achieving the Millennium Development Goals.

B. Progress at the regional level

52. A great deal of progress has been made at the regional level as funds from the L'Aquila Food Security Initiative have been released and put to use, particularly in the Africa region, where assistance is most needed.

Africa

53. A series of consultations and workshops conducted with farmers' organizations throughout the region since 2005 are bearing fruit in 2010, and the role of farmers' organizations is increasingly recognized in the context of CAADP.[26] This consultative process represented the first efforts towards joint activities among regional networks of farmer organizations and was followed by further continent-wide advocacy activities aimed at the planned creation in 2010 of a pan-African platform of farmers' organizations and producers. There is now a proposal for formal recognition of the platform by the African Union and the New Partnership for Africa's Development.

54. National federations of farmers' organizations have been formed so as to enable them to be increasingly well-positioned in the political dialogue with emerging regional economic communities, including the Economic Community of West African States (ECOWAS), the Southern African Development Community, the Common Market for Eastern and Southern Africa and the Central African Economic and Monetary Community. These regional networks are increasingly working with a certain autonomy based on membership contributions, and they are entirely directed by representatives elected by the members. Through the affiliated national

[26] IFAD, *Farmers Speak Out: The Vision and Recommendations of Africa's Farmers' Organizations for the Comprehensive Africa Agriculture Development Programme*, available at http://www.ifad.org/pub/pa/farmers.pdf

platforms, they represent farmers' organizations from 30 sub-Saharan African countries and millions of small farmers — the Réseau des organisations paysannes et de producteurs de l'Afrique de l'Ouest alone represents 45 million farmers in West Africa. More than 40 per cent of the membership base of the four networks is composed of women farmers and organizations of women producers.

55. Although implementation of CAADP in Africa has been uneven owing to weak communications and coordination with member States, regional economic communities, and numerous stakeholders, as well as lack of support for country round-table processes, momentum is growing as the anticipated increases in the funding available for agricultural development in Africa are aligned to support CAADP implementation. By the end of 2009, CAADP compacts had been signed in 9 of the 16 ECOWAS countries, as well as in Burundi, Rwanda and Ethiopia — for a total of 12 countries.[27] Maintaining and accelerating this momentum will clearly depend on the translation of priorities into practical investment programmes and financial support that yield results on the ground for farmers.

56. In September 2010, Ghana will host the African Green Revolution Forum, aimed at promoting investments and policy support for driving agricultural productivity and income growth for African farmers in an environmentally sustainable way. The Forum is a private-sector-led initiative that will bring together African heads of State, ministers, farmers, private agribusiness firms, financial institutions, non-governmental organizations, civil society and scientists to discuss and develop concrete investment plans for achieving the green revolution in Africa.[28] The Forum will be co-sponsored by the highly successful Alliance for a Green Revolution in Africa[29] and Chaired by Kofi Annan, who serves as the Alliance's Chairman of the Board.

Other regional initiatives and actions

57. The World Summit on Food Security recognized and supported similar efforts in other regions, such as the Latin America and the Caribbean without Hunger 2025 initiative and the Association of Southeast Asian Nations (ASEAN) Integrated Food Security Framework.

58. In Latin America and the Caribbean, the main cause of hunger is not lack of food but the unequal distribution of and the lack of access to food by the poorest people. The region is actually the biggest exporter of food on the planet, with an estimated food surplus of 30 per cent in addition to its exports.[30] The Latin America and the Caribbean without Hunger 2025 initiative aims to eradicate hunger and malnutrition and guarantee food security in the region, in accordance with Millennium Development Goal 1, and to reduce chronic child malnutrition to a minimum level, below 2.5 per cent, in all participating countries. Proposed in 2005 by Brazil and Guatemala, the Initiative belongs to all countries in the region and is supported and coordinated by FAO.

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[27] Ibid.

[28] See http://agrforum.com/.

[29] See http://www.agra-alliance.org/.

[30] FAO, Regional Office for Latin America and the Caribbean *Hunger-free Latin America and the Caribbean initiative*, available at http://www.rlc.fao.org/iniciativa/pdf/brochure.pdf.

59. In February 2009, ASEAN developed and endorsed the ASEAN Integrated Food Security Framework, supported by the Strategic Plan of Action on Food Security in the ASEAN Region, as a five-year project aimed at ensuring long-term food security and improving the livelihoods of farmers in the region. Partnership and cooperation arrangements with international organizations (primarily FAO), donor agencies, the private sector, industry associations and the wider community at the regional and national levels is actively sought to ensure the participation of all stakeholders. After one year of implementation, strategic areas of focus include: strengthening food security arrangements at the national and regional levels; promoting favourable conditions in the food market and trade; obtaining sound and timely food security information for planning and management; broadening agricultural innovation for food security; and addressing the impacts of climate change.[31]

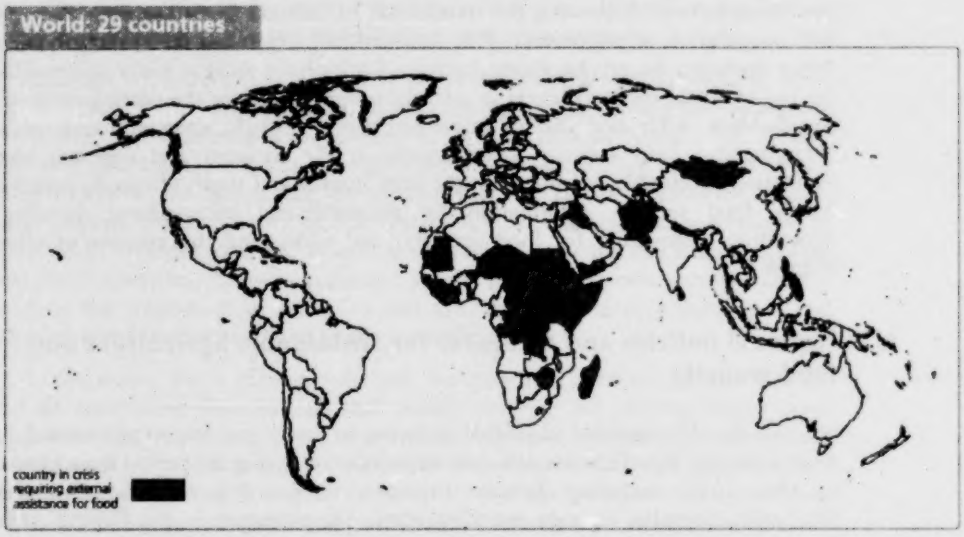
C. National policies and measures for sustainable agriculture and food security

60. Of the 29 countries identified as being in crisis and requiring external food assistance (see fig. II), some noted an improvement during the period from February to May 2010, including Eritrea, Ethiopia, Kenya, Pakistan, the Philippines, Sri Lanka, Somalia, Uganda and Zimbabwe. Six countries — the Central African Republic, Chad, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, Guinea and Mongolia — experienced a deterioration in their situation in the same period, owing in large part to civil strife or climate-related events. Madagascar is included on the crisis list as a new entry as a result of drought-reduced crops in 2010.[3]

61. To assist those countries most in need, initiatives at both the regional and country levels are under way and are leading, in some cases, to significant progress, with national food security investment plans involving the government, civil society and private-sector and international development partners. For example, meetings of the Rwanda Food Security Investment Forum (December 2010), the Bangladesh Food Security Investment Forum (May 2010), the Haiti Forum (June 2010) and the ECOWAS business meeting on the financing of plans for investing in food security (June 2010) are notable efforts that build on the work already under way through national round tables and compacts.

[31] ASEAN Integrated Food Security Framework and Strategic Plan of Action on Food Security in the ASEAN Region 2009-2013, available at http://www.aseansec.org/22338.pdf.

Figure II
Countries requiring external assistance for food



Source: Global Information and Early Warning System, "Crop Prospects and Food Situation", No. 2, May 2010.

Emergency response: Haiti, Rwanda, Bangladesh

62. Following the devastating earthquake in January 2010, WFP, FAO and IFAD reported on the response to food insecurity in Haiti and emphasized the need for well-coordinated action during the emergency and recovery phase. One month later, a High-level Meeting on Food Security and Nutrition in Haiti was convened in Rome to discuss how United Nations agencies, donors and Governments could support Haitian-led agricultural development, food security and the nutrition planning process in the medium and long term. As of March 2010, almost 3 million people, more than 30 per cent of the national population, did not have adequate access to food.[3] In June 2010, Haiti received $35 million from the Global Agriculture and Food Security Programme to help raise the productivity of smallholder farmers, especially women, by improving access to seeds, fertilizers and technology.

63. In Rwanda, agriculture is the backbone of the economy, accounting for about 39 per cent of gross domestic product (GDP) and 90 per cent of the country's food needs. It also generates about 63 per cent of total export revenues. The country estimates that consistent growth rates of 8 per cent or more in agriculture will allow Rwanda to successfully meet Millennium Development Goal 1.[32] Rwanda was the first country to sign the CAADP compact, led by the Government with the participation of, and growing alignment among, all partners, including civil society, businesses, bilateral donors, development banks and United Nations agencies,

[32] "Five Countries Receive Food Security Support Through Multi-Donor Fund", June 2010, available at http://www.un-foodsecurity.org/node/596.

through the working group on agriculture co-led by the Ministry of Agriculture and Animal Resources and the World Bank.

64. In the context of the country-led process in Rwanda, efforts to achieve food security are intensifying, and the country has been praised for its success in engaging all partners in discussions around a central policy document; establishing a sector-wide approach; designing and implementing successful programmes; and increasing the budget for agriculture from 3 to 6 per cent, and soon to 9 per cent, in accordance with the Maputo Declaration.[33] A new investment plan, developed late in 2009, informs Government partners on plans and programmes for food security, including on what has been financed and what remains to be financed and supported.[34] In June 2010, the Global Agriculture and Food Security Programme invested $50 million to transform hillside agriculture by reducing erosion and bolstering productivity in an environmentally sustainable manner.

65. Through its Vision 2021,[35] Bangladesh foresees itself becoming a middle-income country, with agricultural production as the core area of growth. Rice self-sufficiency is one of the goals for food security. While Bangladesh has become less dependent on food aid and has nearly tripled its rice production, many of the poorest people remain malnourished and do not have consistent access to food. Of 160 million people, 60 million are food-insecure, and micronutrient malnutrition affects nearly 30 million women and 12 million children under age 5, while 3 million children under age 5 are acutely malnourished.[36]

66. During the Bangladesh Food Security Investment Forum, held in May 2010, a country investment plan was discussed that would help to achieve and sustain food security. The plan is a comprehensive and integrated set of programmes linking the three dimensions of food security — food availability, access to food and utilization of nutrients — and focuses on agriculture, water management, fisheries and livestock, the value chain, the public food-distribution system, safety nets, nutrition and food safety. In support of this country-led effort, the Global Agriculture and Food Security Programme invested $50 million in June 2010 to enhance productivity and the resilience of smallholder farmers in the face of tidal surges, flash floods and frequent droughts, and finance the adoption of improved seed varieties and better water-management techniques.

Boosting farmer productivity: Malawi

67. Many are calling the shift made by Malawi this year from food-aid dependence to exporter of maize a "miracle" that is due to the success of Government-subsidized chemical fertilizers and hybrid maize seeds that were distributed to smallholder farmers. While Government investment in local food production is crucial for sustainable agriculture and rural development, this success story has generated debate to the effect that the "technical fix" of subsidies for imported

[33] Under the Maputo Declaration on Agriculture and Food Security in Africa, African Governments agreed to increase public investment in agriculture to a minimum of 10 per cent of their national budgets and achieve the target of increasing agricultural growth to 6 per cent per annum.

[34] Nabarro, David, statement to the Rwanda CAADP Post-Compact Meeting, December 2009.

[35] Bangladesh Vision 2021, available at http://www.cpd-bangladesh.org/Policy%20Brief/sub%20folders/downloads/Vision_2021_English.pdf.

[36] Nabarro, David, statement on achieving and sustaining food security in Bangladesh, Bangladesh Food Security Investment Forum, May 2010.

fertilizers and seeds would prevail only in the short term[37] and that longer-term success for a truly sustainable green revolution in Africa will require smallholder farmers to have access to enough land as well as access to agricultural markets, so as to be able to make a decent living and produce surpluses in a sustainable manner.

68. In response to the Malawi grain surplus, WFP bought 50 tons of maize in July 2010 from the Grain and Legumes Association, a farmers' organization made up of more than 95,000 smallholder farmers, as part of the agency's Purchase for Progress initiative, which buys surplus from local farmers' organizations for its aid operations, thereby helping to boost agricultural production and incomes in developing nations. Farmers' organizations have, in turn, used their profits to boost production and increase food security, including by investing some of their earnings in seeds and fertilizers for the next harvest. It is estimated that by 2013, at least half a million smallholder farmers — mostly women — will have increased and improved their agricultural production and earnings as a result of this initiative, which was launched in 2008 and is now active in 21 countries. In addition to supporting the commodity exchange, the initiative is also buying directly from farmers' organizations and helping them to meet market standards.[38]

IV. The way forward: maintaining the global momentum on a comprehensive approach to achieve food security through agricultural development

69. Overall, there is an increasing harmonization among multiple stakeholders at the international level, providing a useful organizational architecture for regional and national efforts. The Global Partnership for Agriculture, Food Security and Nutrition provides a conceptual home, the High-level Task Force on the Global Food Security Crisis encourages coordination and synergy, the Global Agriculture and Food Security Programme provides a means for streamlining financial support, the WEF New Vision for Agriculture and the Alliance for a Green Revolution in Africa both stimulate joint work by the private and public sectors, the reformed Consultative Group on International Agricultural Research system streamlines research, and the revitalized Committee on World Food Security improves the overall governance of food security work. All those actors face the challenge of finding ways in which their different elements can be helped to mesh together and to do so through measures that support the realization of agreed outcomes at the global and national levels.[39]

70. At a High-level Meeting on the theme "Partnering for food security", convened in September 2009, the Secretary-General proposed steps to move the internationally agreed principles on food security into action, calling on Governments to advance effective country-led and regional strategies; develop country investment plans and programmes to achieve the goals of those strategies; ensure mutual accountability through public benchmarks, indicators and a peer

[37] GRAIN, "Unravelling the 'Miracle' of Malawi's Green Revolution", January 2010, available at http://www.grain.org/seedling_files/seed-10-01-1.pdf.

[38] "Small-scale farmers in Malawi latest beneficiaries under United Nations local purchase scheme", July 2010, available at http://www.un-foodsecurity.org/node/626.

[39] Nabarro, David, notes from presentation on food security, G-8 Development Ministers' Meeting, Halifax, Nova Scotia, 28 April 2010.

review framework to measure progress; and develop a flexible financing architecture that includes well-coordinated bilateral and multilateral mechanisms to support country-led strategies and investment plans. He further expressed support for the expansion of North-South, South-South and trilateral cooperation for the development and implementation of comprehensive plans, country-led and called on world leaders to work with regional economic communities, associations, organizations and agencies to strengthen mechanisms for financial and technical cooperation with donors and other stakeholders to facilitate regional economic integration.[40]

71. Ensuring broad ownership and inclusiveness is essential to achieving food and nutrition security, and wider, outcome-focused partnerships are increasingly seen as the way forward. The requirement that different initiatives be harmonized and work in synergy places a substantial burden on those responsible for leadership and coordination. Signs of polarization between Governments and new multi-donor funding mechanisms, as well as the intensive promotion of country-led processes that may not be aligned with donor timetables and agendas, will present challenges in future if the global process is to be truly country-led and sustain the inclusiveness that characterizes the L'Aquila statement and the Rome Principles.[39]

72. Without substantial additional investment and better policies in support of smallholder agriculture, many of the poorest countries will not reach the targets of Millennium Development Goal 1. Consequently, there is a need to increase spending on agricultural production, through official development assistance, foreign direct investment and national budget support. Solutions to agricultural and rural problems are most successful in the context of consistent, well-integrated national and subregional policies that take into account the constraints of national, subregional and international environments. Rural organizations must therefore secure the means to participate in and influence mechanisms and policy options in those areas.

73. A review of the many efforts currently under way, as set out above, suggests that while the level of coordination and communication has increased among stakeholders invested in and affected by the food crisis, it remains to be seen whether the momentum of such processes will succeed in effecting meaningful, long-term changes for poor smallholder farmers in developing countries, especially for women in countries that currently require food assistance.

[40] "Partnering for Food Security: Moving Forward: a proposal from United Nations Secretary-General Ban Ki-moon and United States Secretary of State Hillary Clinton", available at http://www.un.org/issues/food/taskforce/pdf/Partnering%20for%20Food%20Security%20-%20Moving%20forward.pdf.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights obligations related to access to safe drinking water and sanitation

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted by the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation. Catarina de Albuquerque, in accordance with Human Rights Council resolution 12/8.

* A/65/150.

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Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque

Summary

The independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, submits the present report to the General Assembly in accordance with Human Rights Council resolution 12/8. In the report, the independent expert focuses on how human rights, in particular the human rights to water and sanitation, can make a contribution to the realization of the Millennium Development Goals, with a particular focus on target 7.C. She begins with a short summary of the history and defining attributes of the Millennium Development Goals and analyses their potential to help progressively realize economic, social and cultural rights. She continues by examining how human rights can address a number of gaps in the Millennium Development Goal framework relating to universal access, international cooperation and assistance, the formulation of targets and indicators and aligning them with human rights standards, non-discrimination and specific attention to the most marginalized and disadvantaged groups, participation, promoting intersectoral approaches and accountability. The final section of the report contains conclusions and recommendations.

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I. Introduction

1. The present report is submitted to the General Assembly by the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation in accordance with Human Rights Council resolution 12/8. It examines how human rights, in particular the rights to water and sanitation, can make a contribution to the realization of the Millennium Development Goals, with a particular focus on target 7.C, as requested by the Human Rights Council in its resolution 7/22. It begins with a short summary of the history and defining attributes of the Millennium Development Goals. The report analyses the potential for the Millennium Development Goal framework to contribute to the progressive realization of economic, social and cultural rights. It also considers a number of gaps in the monitoring framework and the impact of human rights law in addressing these gaps. Finally, the report offers recommendations on how the human rights framework can help to strengthen development strategies based on the Millennium Development Goals, for the benefit of equitable and sustained poverty reduction efforts as well as increased legal and policy coherence at global and national levels.

2. From 21 to 24 September 2009, in New York, the independent expert organized several bilateral meetings and expert consultations on the Millennium Development Goals (in particular Goal 7) and the human rights to water and sanitation, with experts in human rights law, water, sanitation and development. She continued informal consultations with experts, development practitioners, States and civil society organizations through the beginning of 2010. The perspectives and expertise offered during these consultations were extremely helpful to the independent expert in drafting the present report. She is thankful to all those who shared their views with her.

II. History and promise of the Millennium Development Goals, including Goal 7

3. In the United Nations Millennium Declaration of September 2000,[1] leaders from 189 nations embraced a vision for the world in which developed and developing countries would work in partnership for the reduction of extreme poverty. To provide a framework for measuring progress, the poverty reduction commitments in section III of the Declaration were subsequently broken down into eight Millennium Development Goals, 18 targets and 48 indicators.[2] The Goals address many dimensions of poverty, such as income poverty, hunger, lack of education, disease and inadequate access to water and sanitation. They also place responsibility upon the international community to assist in areas including trade, aid and debt relief.

4. Brevity and simplicity are among the Millennium Development Goals' main virtues. The Goals were not intended as a complete development strategy and should be interpreted in the context of broader global commitments, including those relating to human rights, as noted in the Millennium Declaration. The Millennium Development Goals are no panacea by themselves: no set of targets can be achieved

[1] See General Assembly resolution 55/2.

[2] Later revised to include four new targets agreed to by member States at the 2005 World Summit (see General Assembly resolution 60/1), and relevant additional indicators.

in the absence of appropriate underlying institutions and public policies. While global goals are important for setting common benchmarks for progress, their application at the national level may require adaptation. Understood within these constraints, and contextualized and tailored in accordance with human rights standards and with national priorities and particularities, the Millennium Development Goals offer a framework for tracking human development progress, informing and monitoring public policy choices, identifying resource and capacity gaps and mobilizing needed financial flows, while contributing to the progressive realization of human rights.

5. Target 7.C commits the international community to "halve, by 2015, the proportion of people without sustainable access to safe drinking water and sanitation". The indicator used is the "proportion of population using an improved drinking water source or improved sanitation facility, urban and rural". The term "improved" was not specified any further, but in practice is taken to refer to water sources or delivery points that, by nature of their construction and design, are likely to protect the water from outside contamination; and sanitation facilities that hygienically separate human excreta from human contact.[3] The WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation is the official United Nations mechanism tasked with monitoring progress towards the drinking water and sanitation target. The Joint Programme publishes estimates every two years on access to improved water sources and sanitation facilities worldwide, drawing data from household surveys and censuses.

6. While target 7.C itself is of critical importance, it is also indispensable for achieving the other Millennium Development Goals:

(a) Access to clean water and sanitation can reduce the risk of child mortality (Goal 4) by 50 per cent;[4]

(b) Clean water supply and sanitation services reduce diseases such as anaemia and vitamin deficiency that undermine maternal health (Goal 5);[5]

(c) Poor hygiene deriving from inadequate access to water and sanitation exposes people living with HIV/AIDS to increased risks of disease, and poor sanitation contributes to malaria which claims the lives of some 1.3 million people per year, 90 per cent of them children under the age of five (Goal 6);[6]

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[3] See *Indicators for Monitoring the Millennium Development Goals: Definitions, Rationale, Concepts and Sources* (United Nations publication, Sales No. E.03.XVIII.18), pp. 64-68; and WHO/UNICEF Joint Monitoring Programme, *Progress on Sanitation and Drinking-Water, 2010 Update* (available at www.wssinfo.org), p. 34. Examples of improved water sources include piped water into dwellings, plot or yard; public taps or standpipes, tube wells or boreholes; protected dug wells; protected springs and rainwater collection. Examples of improved sanitation facilities include flush or pour-flush sanitation facilities leading to piped sewer systems; septic tanks or pit latrines; ventilated improved pit latrines; pit latrines with slabs; and composting toilets.

[4] UNDP, *Human Development Report 2006: Beyond scarcity: power, poverty and the global water crisis* (2006), p. 23.

[5] Ibid

[6] Ibid.

(d) Water collection duties and lack of adequate or appropriate sanitation facilities keep girls out of school, and water-related diseases such as diarrhoea cost 443 million school days each year (Goal 2);[7]

(e) For many women and girls inadequate sanitation implies a loss of dignity and represents a source of insecurity. Water collection responsibilities and the time spent caring for relatives afflicted by water-related diseases diminish women's opportunity to engage in productive activities (Goal 3);[8]

(f) Looking beyond basic water supply for personal and domestic uses, the absence of clean water and sanitation is also a major cause of poverty and malnutrition, and water insecurity linked to climate change may increase the number of people suffering malnutrition by 75 million to 125 million by 2080 (Goals 1 and 7).[9]

7. The Millennium Development Goals can offer a valuable vehicle for the progressive realization of economic, social and cultural rights. However, the onset of the global financial and economic crises, on top of the global water, sanitation, food and climate crises, has put the resolution of the Goals at risk. The world appears on track to meet the water target, although there are significant problems when one goes beyond global aggregates and examines regional and in-country disparities. According to the latest estimates, 884 million people worldwide rely on unimproved water sources.[10] Of these, 84 per cent live in rural areas.[11] Sanitation is of greater concern still, as it is one of the least likely to be targets. Some 2.6 billion people worldwide are without improved sanitation and 1.2 billion people — mostly in rural areas — continue to practice open defecation.[12] If the current rate of progress is maintained, the sanitation target will be missed by 13 percentage points, meaning that, by 2015, 2.7 billion people will still be without access to improved sanitation.[13] And even if the targets are met, many people will still not have access to water and sanitation. Hence, efforts to realize access to both sanitation and water must be reinforced.

III. The contributions of human rights to the realization of the Millennium Development Goals, particularly Goal 7

8. There appears to be a widespread assumption in certain quarters that the Millennium Development Goals and human rights are, in effect, the same thing, and hence fulfilling the former effectively discharges any concern for the latter. One of the aims of the present report is to address this assumption, illustrating the important differences, as well as possible synergies between the Goals and human rights, and explaining why an explicit human rights focus is indispensable.

9. Notwithstanding widespread adherence to different international human rights treaties, human rights standards and principles have only selectively been integrated in national strategies to realize the Millennium Development Goals, including those

[7] Ibid., p. 22.
[8] Ibid., p. 23.
[9] Ibid., pp. 22 and 24.
[10] WHO/UNICEF Joint Monitoring Programme, note 3 above, p. 7.
[11] Ibid., p. 18.
[12] Ibid., pp. 6 and 22.
[13] Ibid., p. 8.

connected with target 7.C, and are virtually absent from global cooperation frameworks. There are a range of reasons for this disjuncture. The Millennium Development Goals project and international human rights law have very distinctive histories, and there are disciplinary differences and institutional fragmentation which are only now incrementally being bridged.

10. The explanations for the insufficient progress towards the realization of the Millennium Development Goals are both context-specific and complex. Human rights do not provide all of the answers. However, there are a number of important ways in which the human rights framework may help fill critical analytical and implementation gaps in Millennium Development Goal-based strategies. The international human rights framework must be seen as the baseline commitment on global efforts to meet the Goals.[14] While human rights embody legally binding obligations and need no instrumental justifications, there is increasing evidence that human rights-based approaches cannot only promote inclusive development processes, but also help to produce more equitable and sustainable development results. Enforceable socio-economic rights claims have been shown to have large-scale life-saving impacts.[15]

11. Within certain parameters, the Millennium Development Goals can be seen as complementing and contributing to national efforts to realize human rights. They might do this by bringing strengthened political commitment to the fulfilment of certain basic needs — including water and sanitation — protected under international human rights law, and by strengthening bilateral and multilateral partnerships within the framework of Goal 8, where needed. However, the Millennium Development Goal targets and indicators agreed at the global level reflect certain tensions and occasional inconsistencies with international human rights standards. Unless these problems are rectified, the result may be not only policy incoherence, but also Goal-based development strategies that may inadvertently violate international human rights standards.

A. The notion of progressive realization of universal access

12. The first question concerns the scale of ambition embodied in the Goals. The targets on access to water and sanitation are set at a 50 per cent reduction in the lack of access by the year 2015. But international human rights obligations do not stop at 50 per cent reduction or any other arbitrary benchmark. Whatever time period may prove realistic, international human rights law requires that States ultimately aim for universal coverage within time frames tailored to the country situation. Achieving the global Millennium Development Goal targets would undoubtedly represent a great success for many countries; but it is important to keep in mind that this would still leave 672 million people without access to water and 1.7 billion people without access to sanitation in 2015.[16] In that regard, some countries present notable

[14] See 2005 World Summit Outcome (General Assembly resolution 60/1), para. 126; Accra Agenda for Action (available from www.oecd.org), para. 13 (c).

[15] "Elements for an optional protocol to the International Covenant on Economic, Social and Cultural Rights: Analytical paper by the Chairperson-Rapporteur, Catarina de Albuquerque" (E/CN.4/2006/WG.23/2), paras. 61-66; Varun Gauri and Dan Brinks, eds., *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge: Cambridge University Press, 2008).

[16] WHO/UNICEF Joint Monitoring Programme, note 3 above, pp. 8-9.

examples. For instance, Bangladesh, Kenya and South Africa have set targets for access to water and sanitation that are higher than the global Millennium Development Goal targets, and Sri Lanka is aiming for universal access to water by 2025.[17]

13. The Millennium Development Goals are global targets to be achieved at the global level. The targets should not be applied uniformly at the country level in all cases. It is permissible and even necessary to tailor and contextualize the Goals to diverse national conditions and resource constraints. A 50 per cent reduction in the lack of access to water and sanitation may be ambitious in many countries, but relatively simple in others. Many countries should set targets beyond this benchmark to be achieved by 2015.

14. Human rights require that such national target-setting be undertaken with reference to an objective assessment of the national priorities and resource constraints within each country. This, in essence, is the meaning of the term "progressive realization", as enshrined in article 2(1) of the International Covenant on Economic, Social and Cultural Rights. States parties are under the obligation to progressively realize the rights to water and sanitation to the maximum of their available resources. States are required to move towards the goal of full realization as expeditiously and effectively as possible, within available resources and within the framework of international cooperation and assistance, where needed. This implies that all States — including those that have already reached the global Millennium Development Goal target — must continue to take steps to ensure the full realization of the human rights to sanitation and water. Reaching the Millennium Development Goal target must not be used as a justification for falling short of achieving universal access. In the process of achieving universal access, the Goals may provide relevant medium-term national benchmarks.

15. Progressive realization does not only require gradually increasing the number of people served with a view to achieving universal access, but also improving the levels of service. The Millennium Development Goal framework monitors whether or not people have access to an improved water source and sanitation facility, which does not capture all gradual improvements on the ground. For instance, public or shared sanitation facilities are not considered as progress towards the Goals, even if they are accessible without compromising security, well maintained and hygienic, while they could be seen as an intermediate step away from open defecation[18] in the progressive realization of human rights. At the same time, the Millennium Development Goal framework fails to provide incentives to go beyond the standard necessary to reach the Goals.[19] The progressive realization of human rights encompasses a more fluid concept requiring States to take constant steps towards fully ensuring human rights,[20] i.e. reaching a level of adequate access specified by criteria that will be further discussed below. Significantly, the full realization of the

[17] Centre on Housing Rights and Evictions, "The Significance of Human Rights in MDG-based Policy Making on Water and Sanitation: An Application to Kenya, South Africa, Ghana, Sri Lanka and Laos" (Geneva, 2009), pp. 5-7; Bangladesh, Poverty Reduction Strategy Paper, p. 168 ("The government expects to achieve the targets of safe water and sanitation for all by 2011 and 2010 respectively").

[18] Jamie Bartram, "Improving on haves and have nots", *Nature*, vol. 452, No. 20 (March 2008), p. 284

[19] Ibid., p. 283.

[20] Ibid., p. 284, calling for a sequence of benchmarks.

rights to water and sanitation reaches beyond the service level provided for by the Millennium Development Goals. Accordingly, States that have already met this level — even if universally — are still required to improve the standards achieved, for instance, by ensuring service provision within households.

16. It is challenging in many contexts to form definitive judgements about the extent to which States are meeting their obligations progressively to realize human rights. It is difficult to assess in quantitative terms whether a State is expending "the maximum of its available resources". However, there is an emerging body of research and practice in the field of quantitative assessments of human rights progress, going directly to the question of whether States are dedicating sufficient resources to the realization of their obligations. The human rights framework requires an examination of the fiscal and policy efforts undertaken for the realization of human rights, to assess whether these are sufficient under the given circumstances. Not only is an evidence-based assessment of this question important in its own right, but States which are able to demonstrate maximum effort may enjoy strengthened legal and moral claims for international assistance where national resources are lacking. Rights-based budget analysis has been explored quite extensively.[21] There are many other approaches, including the use of cross-country comparisons of national budget expenditure on various rights to support advocacy as well as reporting processes under the International Covenant on Economic, Social and Cultural Rights (see www.cesr.org). There are also more elaborate and data-intensive approaches using econometric analysis, costing exercises and modelling of affordability constraints.[22] Strengthened accountability can be pursued through composite indexes aiming to reveal comparative insights about the adequacy of Government efforts in fulfilling a limited bundle of socio-economic rights.[23] Such instruments can help to assess whether States are directing the maximum of available resources towards the progressive realization of the rights to sanitation and water for all.

17. National strategies and action plans, endorsed at the highest levels, are central to demonstrating the vision for ensuring full enjoyment of the rights to water and sanitation. The Human Rights Council has called for national and/or local plans of action "in order to address the lack of access to sanitation in a comprehensive way" with the "full, free and meaningful participation of local communities in the design, implementation and monitoring of such plans".[24] General Comment No. 15 of the Committee on Economic, Social and Cultural Rights identifies the adoption of a national strategy on safe drinking water as a priority and specifies certain characteristics this strategy should have (see E/C.12/2002/11, para. 47). National plans should be ambitious but realistic, integrated within national poverty reduction strategies and short- and medium-term expenditure frameworks, within a longer-

[21] For an overview of budget analysis and other tools for more effective monitoring of economic, social and cultural obligations, see E/2009/90.

[22] See, for example, Edward Anderson and Marta Foresti, "Assessing Compliance: the Challenge for Economic and Social Rights", *Journal of Human Rights Practice*, vol. 1, No. 3 (November 2009).

[23] Lawson-Remer, Terra et al., "An Index of Economic and Social Rights Fulfillment: Concept and Methodology", Working Paper (15 June 2009). See also Eitan Felner, "A New Frontier in Economic and Social Rights Advocacy? Turning Quantitative Data into a Tool for Human Rights Accountability", *International Journal of Human Rights*, vol. 9, No. 109 (December 2008).

[24] Human Rights Council resolution 12/8, para. 4. See also A/HRC/12/24, para. 81 (c).

term vision and strategy for universal access. These linkages will help to ensure that water and sanitation plans will not go the way of many well-meaning but ineffective national human rights planning exercises, but will actually be financed and operationalized.

B. International cooperation and assistance

18. Both the Millennium Development Goals and human rights foresee international cooperation in order to assist resource-constrained countries. Goal 8 contains a number of commitments on further developing the trading and financial system, increasing market access, enhancing debt relief, increasing official development assistance, improving access to essential drugs and encouraging technology transfer, taking into account, in particular, the needs of least developed countries, landlocked developing countries and small island developing States. Few Millennium Development Goals have attracted as much sustained criticism as Goal 8, however. Unlike other Goals, it provides little if any basis for accountability, in that it lacks time-bound targets. The human rights framework can make a difference in this regard.

19. While States have the primary legal obligation for the realization of human rights domestically, all States have responsibilities to create an enabling environment for human rights realization.[25] There are a number of legal obligations associated with economic, social and cultural rights, including the rights to water and sanitation, which, subject to certain important qualifications, are to be discharged within the framework of international cooperation. States failing to meet their obligations by reason of legitimate resource constraints are required to call upon international assistance, and the international community has a responsibility to respond, whether bilaterally or collectively, through financial aid, technical assistance or other appropriate measures. The Human Rights Council has recognized the important role of international cooperation and assistance played by the United Nations, development and donor agencies, and stresses that more should be done to support States in their efforts to address the lack of access to sanitation. The Council has also urged development partners to adopt a human rights based approach when designing development programmes in support of national initiatives relating to sanitation (see Council resolution 12/8 (para. 6)). The logic of these recommendations applies equally to water.

20. The poor record of achievement for target 7.C reflects inadequate political prioritization by donor and partner countries alike, particularly in the case of sanitation. While aid for water and sanitation is increasing in absolute terms, the share of the water and sanitation sector has been declining relative to other

[25] See articles 1, 55 and 56 of the Charter of the United Nations, article 28 of the Universal Declaration of Human Rights articles 2 (1) and 11 (1) of the International Convention on Economic, Social and Cultural Rights, articles 4, 24 (4), 27 (4) and 28 (3) of the Convention on the Rights of the Child; article 32 of the Convention on the Rights of Persons with Disabilities, and more specifically General Comment No. 15 (E/C.12/2002/11), paras. 30-36.

sectors.[26] Moreover, aid is generally not well-targeted: only 42 per cent of aid for these sectors committed between 2006 and 2008 was addressed to least developed and other low-income countries.[27] The share of aid for basic sanitation and water services decreased from 27 per cent in 2003 to 16 per cent in 2008, much greater shares being directed at large systems, which generally do not reach the poorest segments of the population.[28] Strikingly, only about one third of aid to the water and sanitation sectors is directed to sanitation, even though far greater efforts are needed in this area.[29]

21. Unlike the situation in some other sectors, there is no platform to hold donor and partner countries accountable for their commitments. Aid coordination remains fragmented and incoherent.[30] The design of aid and cooperation policies should be guided by human rights standards. Moreover, there is a need for improved political prioritization, aid effectiveness and targeting of funding to where it is most needed. The "Sanitation and Water for All" initiative is a relatively new international partnership of national Governments, donors, civil society organizations and other partners working to address this challenge and galvanize political commitment to increase access to water and sanitation. This initiative provides capacity-building support for strong national processes with improved data and analysis on the sanitation and water supply sectors for decision-making, mutual accountability among aid agencies and partner Governments (and among Governments and their people) and better targeting and mobilization of funding. It aims to mobilize catalytic funding and provide specific technical assistance to the most off-track countries.[31] To meet this objective, donor commitments to support the implementation of actionable plans will be crucial.

C. Aligning targets and indicators with human rights

22. The normative content of the rights to water and sanitation can be determined in terms of the criteria of availability (referring to sufficient water for personal and domestic use, or sufficient sanitation facilities), quality (including safety), acceptability (including cultural acceptability), accessibility and affordability (see E/C.12/2002/11, para. 53, and A/HRC/12/24, paras. 69-80). The notion of progressive realization relates not only to progressively achieving universal access to water and sanitation, but also to meeting these standards. Human rights do not settle for minimum standards, such as basic access to water and sanitation, but ultimately require achieving a higher standard that guarantees an adequate standard of living.

23. The indicator for target 7.C is the proportion of the population having sustainable access to an improved water source. The definition of an improved water source is not specified in detail but refers mainly to specific types of water supply such as piped water or protected wells. With regard to sanitation, the indicator refers

[26] World Health Organization, "UN-Water global annual assessment of sanitation and drinking water 2010" (available at www.sanitationandwaterforall.org), p. 7.

[27] Ibid., p. 26.

[28] Ibid., pp. 7 and 30.

[29] Ibid., p. 28.

[30] UNDP note 4 above, p. 70.

[31] Sanitation and water for all fact sheet, available at www.sanitationandwaterforall.org/files/Publications%20and%20Resources/SWA_Fact_Sheet_English.pdf.

to "the percentage of the population with access to facilities that hygienically separate human excreta from human, animal and insect contact. [...] To be effective, facilities must be correctly constructed and properly maintained".[32]

24. In the first instance, human rights law requires that water and sanitation services be available. Water supply for each person must be sufficient for personal and domestic uses. In determining what is sufficient, human rights ultimately go beyond minimum targets such as 20 litres of water per person per day as referred to in the official guidance on the Millennium Development Goal indicators,[33] which is considered insufficient to ensure health and hygiene.[34] The Millennium Development Goal indicators do not explicitly refer to the availability of services, but use access to an improved water source as a proxy assuming that such sources are likely to provide a sufficient quantity of water.[35] For sanitation, availability is implicitly addressed in the indicator framework since shared facilities are not considered improved. However, from a human rights perspective, facilities such as those shared with neighbours (i.e., only a small number of people), which are accessible, safe, hygienic and well kept, may be acceptable.

25. Secondly, to meet human rights standards, water must be safe, that is, of such quality that it does not pose a threat to human health. Sanitation facilities must be hygienically and technically safe to use. To ensure hygiene, access to water for cleansing and hand washing is essential. While target 7.C explicitly refers to access to safe drinking water, the indicator does not measure quality directly. It is based on the assumption that improved sources are likely to provide safe water. However, this is not always the case. The drinking water obtained from many improved sources is in fact unsafe,[36] with potentially adverse consequences for the health-related Millennium Development Goals as well as target 7.C. Simply putting a lid on the polluted water, which then counts as a protected well, does not mitigate all forms of pollution.[37] To include an assessment of actual drinking water safety in the Joint Monitoring Programme assessments, household survey data would need to be complemented by data derived from other approaches such as periodic water quality sample surveys using field-based techniques. This is already done in Bangladesh, where a serious contamination of the groundwater with arsenic made it mandatory to monitor water quality, since many "improved" water sources were severely contaminated.

26. With regard to sanitation, the safety criterion is implicit in the Millennium Development Goal indicator insofar as avoiding contact with excreta is concerned, but the indicator does not refer to water necessary for personal hygiene. Moreover,

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[32] *Indicators*, note 3 above, p. 66. The methodological assumptions and process for the Joint Monitoring Programme's coverage estimations are set out in "WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation: Policies and Procedures", Version 4 (April 2004).

[33] *Indicators*, note 3 above, p. 64, referring to the WHO/UNICEF "Global Water Supply and Sanitation Assessment Report" (2000), pp. 77-78.

[34] Guy Howard and Jamie Bartram, "Domestic Water Quantity, Service Level and Health", 2003, WHO document WHO/SDE/WSH/03.02, p. 22.

[35] *Indicators*, note 3 above, pp. 64-65.

[36] WHO/UNICEF, Joint Monitoring Programme, note 3 above, p. 31; German Technical Cooperation, "MDG monitoring for urban water supply and sanitation: catching up with reality in Sub-Saharan Africa" (2007), pp. 7 and 14.

[37] Ibid., p. 13.

the indicator is silent on the question of safe disposal of excreta,[38] which in turn can affect water quality. Where the collection, treatment, disposal or re-use of excreta is not carried out with adequate care, leakage into groundwater, which is often a source of drinking water, may occur. Similarly, sewage from flush toilets that is not treated may end up in water used by downstream communities.[39] In such cases, leakage of sewage from "improved" sanitation facilities then results in polluting water sources which are nevertheless considered "improved" sources under the Millennium Development Goal framework.[40]

27. Thirdly, human rights require sanitation facilities, in particular, to be culturally acceptable. This will often require gender-specific facilities. Also, facilities will often have to be constructed in a way that ensures privacy and dignity. With regard to water, it must be of an acceptable colour, taste and odour. The Millennium Development Goal indicator fails to capture these aspects.

28. Fourthly, water and sanitation services must be accessible to everyone in the household or its vicinity on a continuous basis. Physical security must not be threatened when accessing facilities. Again, the Millennium Development Goals indicator on water is used as a proxy,[41] on the assumption that "improved" sources are likely to be within the dwelling or a convenient distance from it. Accessibility could be measured more explicitly by using the time a round trip, including waiting time, takes. This could also serve as an indirect measurement of the amount of water people collect, as the distance to the water source has an impact on the quantity that can be collected. In fact, this is an indicator available from the surveys used by the Joint Monitoring Programme and has been reported on sporadically by the Joint Monitoring Programme as an additional criterion.[42] The independent expert considers that this should be done systematically, including examination of accessibility in schools, workplaces and other spheres of life.

29. Furthermore, regular supply is essential for continuous accessibility. This is not considered within the indicators, meaning that the impact of prolonged rationing or the drying up of wells during the hot season will not be picked up. To meet human rights standards with regard to accessibility, water supply must be predictable and must enable users to meet all needs over the day without compromising water quality.

30. Considerations of sanitation, accessibility and physical security when accessing facilities are addressed implicitly insofar as the Millennium Development Goal indicator excludes shared public toilets. Construction and maintenance are specifically contemplated, but apart from that, access is not further specified. Moreover, access must be ensured in a sustainable manner, which is provided for in the target but not necessarily captured by the indicators. People must not only "gain

[38] United Nations Secretary-General's Advisory Board on Water and Sanitation, "'Monitoring and Reporting' progress of access to water and sanitation" (15 April 2008 update, available from www.unsgab.org), p. 11.

[39] German Technical Cooperation, note 36 above, p. 26.

[40] For example, although Costa Rica has nearly met the Millennium Development Goal on sanitation with 98 per cent of the population having access to improved sanitation, the majority of wastewater goes untreated directly into rivers and other waterways (A/HRC/12/24/Add.1, paras. 37-39).

[41] *Indicators*, note 3 above, pp. 64-65.

[42] WHO/UNICEF, Joint Monitoring Programme, note 3 above, p. 28.

access" momentarily towards the target date, but beyond, which requires, inter alia, providing for the management and financing of facilities.

31. Fifthly and finally, services must be affordable. Access to water and sanitation must not compromise the ability to pay for other essential needs guaranteed by human rights such as food, housing and health care. While the Millennium Declaration specifically mentioned reducing by half the proportion of people unable to reach or afford safe water (General Assembly resolution 55/2, para. 19), the notion of affordability was omitted from Goal 7. This suggests that, politically, States saw the significance of affordability for ensuring actual access to services, but could not undertake to monitor it because of the lack of data. Developing such data sets is crucial to monitor affordability levels and progress in that regard. The affordability criterion needs to be revived and prioritized in national Millennium Development Goal monitoring activities and future global initiatives.

32. The above reasoning suggests that the Millennium Development Goal indicators reflect human rights criteria to a certain extent, but that human rights can bring important dimensions to targets and indicators based upon the Millennium Development Goals, helping to refine and expand them. When these additional criteria are factored in, a much bleaker picture emerges. While the extent of the gap is unknown, far more people than indicated by the figures measuring access to improved water sources and sanitation facilities do not have access to sufficient water and sanitation services that are safe, acceptable, accessible and affordable. Assessments carried out by the United Nations Human Settlements Programme demonstrate this by explicitly considering regularity and affordability as additional criteria.[43] Another assessment highlights that access to safe water in urban areas is significantly lower in certain countries than the official figures for access to improved sources would suggest.[44] Likewise, pilot studies by the Joint Monitoring Programme indicate that far from all water sources that are categorized as improved meet water quality standards.[45]

33. The human rights criteria are required to ensure that access is factually guaranteed. For instance, physical "access" alone is not sufficient, when people cannot afford expensive water and sanitation services. The existence of toilets is not sufficient when women cannot use them because they are not sex-separated or do not guarantee privacy. In this way, human rights criteria offer a guide for the development of more specific and contextually appropriate indicators to ensure that human development objectives are achieved and sustained in practice.

34. One need not reinvent the wheel to address the above gaps. Problems of data availability are no doubt a critical constraint at present. But in methodological terms there is a significant body of practice to guide the identification of contextually appropriate targets, indicators and benchmarks to align Millennium Development Goal monitoring as closely as possible with applicable human rights standards. Among the many relevant initiatives, water and human rights experts have

[43] OHCHR, *Claiming the Millennium Development Goals: A Human Rights Approach* (2008), p. 39.

[44] German Technical Cooperation, note 36 above, p. 4.

[45] WHO/UNICEF, Joint Monitoring Programme, note 3 above, p. 31.

elaborated a framework specifically for the development of right-to-water indicators.[46]

35. Accountability begins with reliable, relevant and adequate data. It is critical to supplement the data sources used by the Joint Monitoring Programme with additional data sets that relate specifically to human rights standards. Indicators should reflect the human rights criteria of availability, safety, acceptability, accessibility (including reliability) and affordability. Generating such additional data sets might be viewed as a considerable opportunity cost, to the extent that these funds could otherwise be dedicated to water or sanitation programmes directly. But in the view of the independent expert, the "opportunity" far outweighs the "cost", not only in terms of focusing interventions on key bottlenecks and informing policymaking in the water and sanitation sectors, but also the very substantial multiplier effects this would bring for health, education, gender equality, education, nutrition and related human rights and Millennium Development Goals.

D. Looking beyond averages: non-discrimination

36. Perhaps the most frequently voiced concern about the Millennium Development Goals is that, taken on their face, they may facilitate aggregate human development progress at the expense of the most marginalized populations, thereby potentially exacerbating underlying inequalities. In fact, it would be possible for a country to be in full compliance with the Goals regarding access to water and sanitation without having extended access to any person belonging to the lowest wealth quintile. Whereas the Millennium Declaration refers explicitly in paragraph 23 to "equitable access", this concern for equity is not reflected in the Millennium Development Goals and, regrettably, principles of equality and non-discrimination are at present poorly reflected in most Poverty Reduction Strategy Papers.[47] Non-discrimination and equality are not only instrumentally important in the context of development; they are binding human rights principles reflected in international human rights treaties. Development strategies based on the Millennium Development Goals that pick only the "low-hanging fruit" risk perpetuating and even reinforcing existing inequalities, frustrating sustainable development objectives and violating international human rights standards.

37. The global targets and indicators are generally formulated in terms of aggregate attainments. While the United Nations guidance on monitoring recommends gender as well as urban/rural disaggregation for all Millennium Development Goal indicators as far as possible, in practice the data are only disaggregated to a very limited extent. The indicators on water and sanitation are a notable exception.[48] But even this is no panacea, as the distinction is often more administrative than real, particularly in peri-urban areas, and studies have found that

[46] Centre on Housing Rights and Evictions, "Monitoring implementation of the right to water: a framework for developing indicators", Heinrich Böll Foundation, Global Issue Paper No. 14 (March 2005). See also HRI/MC/2008/3; and Indicators Benchmarks Scoping Assessment, available at http://ibsa.uni-mannheim.de/.

[47] Sakiko Fukuda-Parr, "Are the MDGs Priority in Development Strategies and Aid Programmes? Only Few Are!", International Poverty Centre Working Paper No. 48 (October 2008).

[48] See http://unstats.un.org/unsd/mdg/Data.aspx. A few other indicators have explicit provision for rural and urban or gender disaggregation, but the guidance from the United Nations on this question is not consistent.

in national surveys many urban slums are treated as rural areas.[49] In other instances, the population of informal settlements does not appear at all in the statistics.[50] The situation in urban slums, in particular, can therefore be assumed to be much bleaker than the official figures suggest.[51]

38. Moreover, international human rights instruments not only call for disaggregation between urban and rural areas, but also for assessments of discrimination on grounds of sex, race (including social, national and ethnic origin), disability and political and religious belief, among others. In terms of target 7.C specifically, groups that have been identified as potentially vulnerable or marginalized include women, children, inhabitants of rural and deprived urban areas as well as other poor people, nomadic and traveller communities, refugees, migrants, people belonging to ethnic or racial minorities, elderly people, indigenous groups, persons living with disabilities, people living in water-scarce regions and persons living with HIV/AIDS. Women and girls, in particular, benefit from improved access to water and sanitation as they are frequently responsible for ensuring the provision of water, often at personal risk of physical or sexual assault, and equally when forced to defecate in the open. The human rights framework helps to ensure that the most disadvantaged and marginalized groups are not overlooked in the quest for aggregate progress.

39. How much disaggregation of data is it reasonable to expect, insofar as Millennium Development Goal monitoring is concerned? Some countries have far greater statistical and analytical capacities than others. Data problems are especially acute regarding those living in informal settlements, internally displaced persons, certain ethnic minorities, migrants, persons with disabilities and other vulnerable and marginalized groups who may not be properly reflected in national censuses, administrative records and household surveys. Hence, there is an important capacity-building agenda around the question of national statistical and analytical capacities, without which the distributional impacts and severity of possible human rights harms cannot be anticipated and planned for.

40. Sadly, situations of systematic exclusion, deprivation and discrimination in relation to access to water and sanitation persist, even in many countries that are currently on track to achieve the Millennium Development Goals, as well as many middle-income and developed countries. The way the Goals are framed (almost exclusively being applied in developing countries) overlooks the problems of persistent pockets of poverty and marginalization in richer countries. In particular, a 50 per cent reduction is not nearly ambitious enough in many such contexts. Where countries have almost universal coverage, specific targets should be set to reach the groups that suffer from lack of access owing to discrimination and exclusion. In this regard, global targets must be translated into national and subnational targets and adapted to the specific context, given that regional, ethnic or income inequalities are often the driving force of such exclusion.

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[49] UN-Habitat, *State of the World's Cities 2006-2007: The Millennium Development Goals and Urban Sustainability: 30 Years of Shaping the Habitat Agenda* (2006); and German Technical Cooperation, note 36 above, p. 7.

[50] *The Challenge of Slums: Global Report on Human Settlements 2003* (UN-Habitat publication, Sales No. 04.III.Q.1), p. 14.

[51] German Technical Cooperation, note 36 above, p. 22.

41. A number of countries have made impressive strides in this direction. For example, the Government of Ecuador introduced a total of 96 indicators at national and local levels which help to capture discrimination against women, indigenous peoples and those of African descent.[52] A number of national Millennium Development Goal reports include analysis of the situation of indigenous people or minorities in the context of the water target (see A/HRC/4/9/Add.1, para. 65). Some countries have also disaggregated by region; for example, Thailand added specific targets for disadvantaged regions and Kenya required that all regions improve water and sanitation access by 10 per cent per annum.[53]

42. Further synergies between monitoring of the Millennium Development Goals and human rights monitoring will be critical for ensuring that development strategies based on the Goals are not targeted by default at the better-served populations for whom household data are more readily available (as distinct, for example, from informal settlements), thereby running the risk of entrenching existing inequalities. Strategies for the realization of access to water and sanitation should include targeted interventions, aiming at those who are most disadvantaged and harder to reach as a stepping stone towards universal service provision.

43. There are many useful and viable ways to bring non-discrimination and equity or distributional measures into monitoring. Greater attention is needed to disaggregate not only by reference to rural and urban areas, but also to the upper and lower wealth quintiles of the population. Disaggregation according to sex should be prioritized at the global level in view of the particular challenges, vulnerabilities and discrimination faced by women and girls. In addition to these types of disaggregation, relevant across all countries, a contextualized approach to disaggregation is required. States must identify groups that face discrimination (namely on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or any other status) and specifically monitor progress within these groups to be able to target systematic exclusion.

E. Participation and empowerment

44. The lack of adequate participation has been a troubling feature of many national poverty reduction planning processes, whether based on the Millennium Development Goals or not.[54] Participation has sometimes been reduced to the involvement of user groups in delivery of water and sanitation,[55] or has been dominated by a few well-established non-governmental organizations. A reductionist, tokenistic and technocratic understanding of participation might lighten the State's load in the short run, but will rarely, if ever, be sufficient to genuinely empower people in connection with the decision-making processes that affect their lives.

45. A defining attribute of the human rights framework is its potential to empower people, to challenge existing inequities and to transform power relations to bring about real and sustainable changes, particularly for those most marginalized, with

[52] OHCHR, note 43 above, p. 10.

[53] Malcolm Langford, "Taking rights seriously: six ways to fix the MDGs" (2009), p. 3.

[54] Sakiko Fukuda-Parr, note 47 above, p.14.

[55] Centre on Housing Rights and Evictions, note 17 above, p. 6.

strengthened accountability. Human rights standards compel the participatory formulation of public policies and development plans and the institutionalization of democratic processes. All people have the right to participate in decision-making processes that may affect their rights, and the Committee on Economic, Social and Cultural Rights affirms in its General Comment No. 15 that all people should be given full and equal access to information concerning water, sanitation and the environment (E/C.12/2002/11, paras. 12 (4), 48 and 55).

46. In order to give full meaning and practical expression to "participation," it is vital for States to transcend ad hoc and project-level participatory processes, and seek to encourage a more fundamental and sustainable culture of participation and transparency. Active, free and meaningful participation should be internalized within democratic institutions and political culture. Human rights are, of course, ends in themselves; however, studies have also shown the vital importance of transparency and freedom of information in reducing corruption in the delivery of basic services.[56]

47. There are many well-known barriers to institutionalizing participatory practices, particularly insofar as the poorest and most excluded individuals and communities are concerned. Formal "democratic" guarantees and periodic free elections do not of themselves prevent the capture of governing institutions and decision-making processes by elite groups. Budgetary and programme delivery deadlines, electoral promises and disbursement incentives often crowd out meaningful participation requirements in practice. Analysis of the political, economic, cultural and social causes of exclusion is required as part of any serious effort to promote genuinely participatory processes, including a focus on literacy levels, language constraints, cultural barriers and physical obstacles.

48. Certain countries have made important strides towards introducing participation in the water and sanitation sectors at the national level. For example, Ghana's 2007 national water policy aims to ensure participation at the lowest appropriate level of society in water-related issues and calls for the acceleration of women's representation at all levels and in all spheres of water-related management. South Africa's legislative and policy framework is based explicitly on constitutionally protected human rights to water and sanitation, and the Department of Water Affairs and Forestry issued generic public participation guidelines for use by water service authorities to ensure adequate participation in service delivery.[57] Nevertheless, the main challenge is to more fully translate laws and policies into practice.

F. Intersectoral approaches and addressing root causes

49. Among the defining attributes of human rights is their indivisible, interrelated and interdependent nature.[58] The human rights to water and sanitation are intimately linked to the rights to health, housing, education and political participation, among

[56] Daniel Kaufmann, "Human rights and governance: the empirical challenge", in *Human Rights and Development: Towards Mutual Reinforcement* (Philip Alston and Mary Robinson eds.) (Oxford, Oxford University Press, 2005).

[57] These and other experiences are documented in Centre on Housing Rights and Evictions, note 17 above.

[58] Vienna Declaration and Programme of Action (A/CONF.157/24 (Part I), chap. III), para. 5.

others (E/C.12/2002/11, para. 3, and A/HRC/12/24), as well as the right to life and the prohibition of cruel, inhuman or degrading treatment or punishment in extreme cases.[59]

50. Lack of access to water and sanitation is not simply a question of scarcity of technology, financial resources and infrastructure. It is a matter of setting priorities, a function of societal power relations and a problem of poverty and deeply entrenched inequalities. In order to increase sustainable access to water and sanitation, it is essential to address these underlying causes. Rights-based analyses in the water and sanitation sectors have revealed, for example, lack of secure land tenure as a key blockage,[60] in particular in urban slums. Target 7.D aims to achieve, by 2020, a significant improvement in the lives of at least 100 million slum-dwellers. The target date (five years later than the rest of the targets) and the scale of progress aimed for (around a tenth of the estimated 1 billion slum-dwellers) highlight the low ambition embodied in this target.[61] The indicators used as a proxy to measure progress towards the target do not capture security of tenure, which would be crucial to improve living conditions[62] and is one of the main components of the right to housing.[63] If these underlying issues were addressed and the target on slums were set higher, it would contribute significantly to making progress towards universal access to water and sanitation.

51. The indivisibility and interrelatedness principles strengthen the case for collaborative, intersectoral responses to problems concerning access to water and sanitation. The human rights framework requires that States plan over time towards the ultimate goal of universal water and sanitation coverage. This raises potentially difficult trade-offs in the short run, given the relatively high unit costs of getting to the "hardest to reach". However, these decisions should not be taken in isolation: a rigorous and informed rights-based situational analysis should reveal critical intersectoral linkages necessary for effective collaborative actions and sustained progress towards universal coverage. Whatever the financial and other difficulties involved in reaching the most excluded, there must at least be immediate planning in that direction, through "concrete, targeted and effective" steps.

52. Social protection policies can be expected to feature prominently in an intersectoral, rights-based analysis of the water and sanitation sectors. There have been strengthened calls for "social protection floors" and numerous cases of successful implementation with impressive poverty reduction impacts.[64] While social policy priorities are of course country-specific, the "social protection floor" concept includes water and sanitation within the scope of essential services, along with a set of social transfers to provide a minimum income and livelihood security to ensure continuing access to essential services for the poorest.[65] In practice,

[59] See CCPR/C/HND/CO/1, para. 15, and A/56/44, paras. 181 and 183.

[60] Centre on Housing Rights and Evictions, note 17 above, p. 5.

[61] OHCHR, note 43 above, p. 40.

[62] Ibid.

[63] Committee on Economic, Social and Cultural Rights, General Comment No. 4 (E/1992/23, annex III), para. 8.

[64] United Nations Chief Executives Board for Coordination, "The global financial crisis and its impact on the work of the UN system" (CEB/2009/HLCP-XVII/CRP.1 and Add.1).

[65] International Labour Office/World Health Organization, "The Social Protection Floor, A joint Crisis Initiative of the UN Chief Executives Board for Coordination on the Social Protection Floor" (Geneva, October 2009), p. 2.

however, these minimum packages of affordable social protection guarantees do not frequently appear to have prioritized water or sanitation, as distinct from basic health, nutrition, education and income security objectives. The fundamental importance of water and sanitation, in their own right and also for the realization of health, food, education and other Millennium Development Goals and their corresponding human rights, establishes a strong case for increasing priority attention to water and sanitation. Such an integrated and intersectoral analysis within a broader social protection framework offers a compelling and potentially important means of addressing affordability constraints.

G. Strengthening accountability at national and global levels

53. The Millennium Development Goals help to promote accountability at national and global levels through monitoring and reporting against internationally agreed as well as nationally tailored targets. They draw upon widely available socio-economic statistics to monitor progress towards a realistic number of quantifiable targets. In this regard, they can provide a valuable complement to more traditional human rights monitoring tools and techniques, bringing human development data and quantitative assessment methods to human rights monitoring and hence helping to give a more complete picture of countries' progress — in absolute as well as comparative terms — towards the fulfilment of certain socio-economic rights.

54. However, international human rights commitments constitute prerequisites for the realization of the Goals, providing a wider set of complementary standards and mechanisms for accountability. Human rights monitoring institutions and expert bodies add important additional accountability dimensions to monitoring and reporting processes. These include courts, national human rights institutions and informal justice systems, as well as international mechanisms including the treaty bodies and special procedures. As emphasized earlier, the fact that human rights entitlements apply to all people everywhere — in richer, as well as poorer countries — fills an important gap in the Millennium Development Goals framework.

55. Under international human rights law, States are obliged to put in place mechanisms for accessible, affordable, timely and effective remedies for any breaches of economic, social or cultural rights. These requirements convey a different idea about accountability than that embodied in the Millennium Development Goals framework. The consequences for the non-realization of the Goals and the incentives for better performance are determined largely in the court of public opinion on the basis of the content of periodic reporting processes. This is not to be discounted: in countries with democratic and responsive governing institutions and a free and pluralistic media, a relatively poor scorecard — particularly when contrasted with countries with comparable per capita GDP — may provide welcome stimulus for improved performance. However, human rights standards and monitoring bodies go further by assessing compliance with specific legal obligations for the realization of human rights as well as responsibilities for violations, including with respect to discrimination, exclusion and unjustifiable retrogression.

56. National accountability mechanisms are naturally the most familiar with the needs of the poorest communities, although in some countries and contexts, they

may not be the most responsive institutions. The role of the judiciary and public interest litigation deserve highlighting as courts worldwide are increasingly dealing effectively with economic, social and cultural rights claims. Public interest litigation can be linked to development strategies based on the Millennium Development Goals. For example, UNDP Turkey recently initiated a project called "Linking the MDGs to Human Rights" involving the production of a toolkit for city councils. The aim is to provide guidance on claiming rights and monitoring progress towards the Goals at the local level. The project explored the potential for public interest litigation in administrative courts to remedy human rights violations associated with inadequate progress, avoidable retrogression or discrimination in connection with efforts to realize the Goals.[66]

57. The enforcement of human rights claims can have preventive as well as reactive or corrective impacts and, through a range of feedback channels, exert enduring influence on legislative reform and policymaking. Recent empirical research in Brazil, India, Indonesia, Nigeria and South Africa has found that "legalizing demand for socio-economic rights might well have averted tens of thousands of deaths in the countries studied ... and has likely enriched the lives of millions of others".[67] Litigation of course has its limitations and risks, and we are still learning about the preconditions for effective claims in any given context.[68] Nevertheless, the role of human rights adjudication should be accorded a more explicit and prominent place in strategies to strengthen accountability.

58. National mechanisms should be seen in the context of their interactions with regional and international human rights bodies and instruments. In particular, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 63/117, annex) will likely generate a wealth of case law that will in turn promote adjudication at the national and regional levels and influence judicial and quasi-judicial case law.

59. Apart from judicial and quasi-judicial mechanisms, there is a broad range of administrative, political and social mechanisms and processes to strengthen accountability and incentives for the realization of the Millennium Development Goals and related human rights, including public expenditure reviews, participatory social audits, community scorecards, impact assessments of public policies, budget transparency initiatives and "legal empowerment" initiatives, among many others. There are many institutions with roles to play, from parliamentary review committees and oversight mechanisms to executive and administrative agencies, line ministries, national audit offices and local government bodies. Water and sanitation regulatory bodies, in particular, can play a significant role, when endowed with the power to monitor and enforce service standards, tariffs and regulations in line with human rights standards (see A/HRC/15/31, para. 52). Ombudsmen and national

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[66] Malcolm Langford, "Human rights and MDGs in practice: a review of country strategies and reporting" (2008), p. 30.

[67] Daniel Brinks and Varun Gauri, "A new policy landscape: legalizing social and economic rights in the developing world", in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, Varun Gauri and Daniel Brinks, eds. (Cambridge: Cambridge University Press, 2008).

[68] See *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, Malcolm Langford, ed. (Cambridge University Press, 2009); and Gauri and Brinks eds., note 67 above.

human rights institutions, civil society organizations, community organizers and alternative law groups also have the potential to help strengthen accountability.

60. Among many other suitable mechanisms, human rights impact assessments should be conducted more systematically in all fields of public policymaking, before, as well as during and following implementation. While there is no template for a human rights impact assessment, the principal elements should include (a) incorporating the human rights to water and sanitation in the explicit subject of the assessment; (b) identifying indicators for the assessment that are consistent with relevant international human rights standards; (c) focusing on people who are most excluded and marginalized along with responsible actors; (d) striving to ensure that the assessment, as far as possible, contributes to building the capacities of relevant national stakeholders; (e) ensuring that the process of carrying out the assessment respects human rights principles such as participation, non-discrimination, transparency and accountability; and (f) seeking to involve human rights mechanisms.[69]

IV. Conclusions and recommendations

61. The Millennium Development Goals have served a valuable function in galvanizing international support around a certain number of monitorable poverty reduction targets, including with respect to water and sanitation. The water and sanitation targets are vital human development ends, and they are also indispensable for the achievement of the other Millennium Development Goals.

62. With these factors in mind, there is potential for the Millennium Development Goals and human rights to be seen as consistent and mutually reinforcing. Subject to necessary contextualization, the Goal targets can furnish appropriate benchmarks for monitoring an important subset of economic, social and cultural rights at the national level. Yet, the potential for constructive synergy has not materialized to any great extent in practice. Neither water nor sanitation, in particular, has yet been accorded the priority that is objectively warranted, if progress towards these and other closely related Millennium Development Goals is to be escalated and sustained. The present report has highlighted several areas where the human rights to water and sanitation can be integrated within national Millennium Development Goal monitoring and planning processes, as well as global goal-setting and target-setting processes, in order to redress some of the shortcomings and promote both legal and policy coherence.

63. In line with these conclusions, the independent expert recommends the following:

(a) States are encouraged to adapt, tailor and contextualize Millennium Development Goals at the national level, in a way that ensures respect for human rights, on the basis of an objective assessment of national priorities and resource constraints. States must take deliberate, concrete and targeted steps to progressively realize the rights to water and sanitation and corresponding

[69] See Simon Walker, *The Future of Human Rights Impact Assessments of Trade Agreements* (Intersentia, 2009).

development targets as expeditiously and effectively as possible. Ultimately, they must aim for universal access in line with human rights standards;

(b) States must have a vision of how to fully realize the rights to water and sanitation for all, and elaborate national strategies and action plans to implement this vision. These should be endorsed at the highest political level and integrated within national poverty reduction strategies and expenditure frameworks to ensure their operationalization, sustainability and comprehensiveness;

(c) Sanitation and water must be prioritized by according greater political priority to these sectors, which should be reflected in allocations in State budgets and donor commitments;

(d) States must eliminate discrimination, inequalities and systematic exclusion. They must detect their underlying structural causes, inter alia by developing disaggregated data for access to water and sanitation, to target the most marginalized and vulnerable;

(e) Development cooperation and assistance must be designed and implemented in line with human rights standards and principles, including the rights to water and sanitation and human rights obligations regarding non-discrimination, ensuring that there are adequate and effective measures in place to identify and address any negative impacts on human rights;

(f) Official development assistance for the water and sanitation sector must be better targeted to primarily reach those most in need, including in least developed and other low-income countries as well as the most marginalized communities and populations in other countries. As those most in need tend to benefit from basic systems, priority should be given to these. Moreover, since sanitation continues to be underfunded, and more off track than the water target, the former must be prioritized in aid targeting;

(g) The formulation of new or revised global goals, targets and indicators and their adaptation at the national level must be guided by human rights standards and principles, including the normative content of the rights to water and sanitation, as well as non-discrimination, participation and accountability. In particular, future indicators must reflect the criteria of availability, safety, acceptability, accessibility (including reliability) and affordability in line with human rights standards;

(h) Data collection at the global level and human rights-based monitoring must disaggregate progress according to different grounds of discrimination. Gender and wealth quintiles must be prioritized for that purpose. In addition, a contextualized approach to disaggregation is required. States must identify groups and individuals under their jurisdiction who face discrimination and specifically monitor progress in improving their access to sanitation and water;

(i) The Joint Monitoring Programme should serve as a global discussion platform to facilitate the formulation of possible next-generation global water, sanitation and hygiene targets, corresponding indicators and adequate data-collection mechanisms. It would be well positioned to compile experiences on the measurability of additional indicators, commission research into these

issues where needed and disseminate experiences. To meet this task, it will require adequate resourcing;

(j) Near-universal access to water and sanitation cannot be cause for complacency and States must not overlook persistent pockets of poverty, but instead continue to focus on addressing systematic discrimination and exclusion;

(k) States and other relevant actors must promote genuinely participatory processes and empower people to actively take part in decision-making processes, including on the use of development assistance, inter alia by overcoming barriers including low literacy levels, language constraints, cultural barriers and physical obstacles. To enable meaningful participation, full transparency must be ensured. All people must have full and equal access to information concerning water and sanitation and related plans, policies and programmes, including the use of development assistance;

(l) States and other relevant actors must address water and sanitation in a comprehensive manner, including the underlying causes of lack of access. For that purpose intersectoral approaches are crucial, including the integration of sanitation and water into social protection initiatives;

(m) States must put into place accessible, affordable, timely and effective accountability mechanisms. Judicial and other accountability mechanisms must be made available to all to strengthen accountability for the realization of the Millennium Development Goals. Human rights impact assessments must be carried out more systematically;

(n) States are particularly encouraged to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted by Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in accordance with Human Rights Council resolution 6/29.

* A/65/150.

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Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Summary

The current international system of drug control has focused on creating a drug-free world, almost exclusively through use of law enforcement policies and criminal sanctions. Mounting evidence, however, suggests this approach has failed, primarily because it does not acknowledge the realities of drug use and dependence. While drugs may have a pernicious effect on individual lives and society, this excessively punitive regime has not achieved its stated public health goals, and has resulted in countless human rights violations.

People who use drugs may be deterred from accessing services owing to the threat of criminal punishment, or may be denied access to health care altogether. Criminalization and excessive law enforcement practices also undermine health-promotion initiatives, perpetuate stigma and increase health risks to which entire populations — not only those who use drugs — may be exposed. Certain countries incarcerate people who use drugs, impose compulsory treatment upon them, or both. The current international drug control regime also unnecessarily limits access to essential medications, which violates the enjoyment of the right to health.

The primary goal of the international drug control regime, as set forth in the preamble of the Single Convention on Narcotic Drugs (1961), is the "health and welfare of mankind", but the current approach to controlling drug use and possession works against that aim. Widespread implementation of interventions that reduce harms associated with drug use — harm-reduction initiatives — and of decriminalization of certain laws governing drug control would improve the health and welfare of people who use drugs and the general population demonstrably. Moreover, the United Nations entities and Member States should adopt a right to health approach to drug control, encourage system-wide coherence and communication, incorporate the use of indicators and guidelines, and consider developing a new legal framework concerning certain illicit drugs, in order to ensure that the rights of people who use drugs are respected, protected and fulfilled.

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I. Introduction

1. In its resolution 6/29, the Human Rights Council requested the Special Rapporteur to submit an interim report to the General Assembly. The Council, in its resolution 12/24, also encouraged the Special Rapporteur to integrate, within his existing mandate, the human rights dimensions of access to medicines. The present report is submitted in accordance with those requests.

2. Since his last report to the General Assembly (A/64/272), the Special Rapporteur has undertaken a number of activities to develop the mandate further and raise awareness of the right to health globally. As well as undertaking country missions to Australia in November 2009 and Guatemala in May 2010, the Special Rapporteur participated in a number of consultations and conferences on the right to health, including a parliamentarians' consultation on maternal health in the Asia-Pacific region in Bali; a civil society consultation on migrant workers and health organized by Coordination of Action Research on AIDS & Mobility, CARAM-Asia, in Kuala Lumpur; the Global Partners in Action NGO Forum for the review of the International Conference on Population and Development (ICPD@15) in Berlin; and the XVIII International AIDS Conference in Vienna in July 2010.

3. The Special Rapporteur also gave keynote presentations at New York University and Columbia University; the Stakeholders' meeting of the Human Rights Development Initiative in Johannesburg; the International Conference on Realizing the Rights to Health and Development for All in Viet Nam; the Cervical Cancer Summit Meeting at the European Parliament in Brussels; the Judiciary and the Right to Health Conference held at Princeton University; and the HealthRight International Annual Health and Human Rights Awards Dinner in New York. The Special Rapporteur also gave lectures during a course on the Justiciability of Economic, Social and Cultural Rights at the Institute for Human Rights, Åbo Akademi University, Turku/Åbo, Finland.

4. The Special Rapporteur held a civil society consultation in Guatemala in March 2009, bringing together civil society organizations from across Central America. This consultation provided an excellent opportunity to gain information that proved essential to completing the country mission in Guatemala in May 2009. The Special Rapporteur also attended a consultation in Afghanistan with a particular focus on paediatric and maternal health at the invitation of Save the Children.

5. The present report of the Special Rapporteur considers demand-side measures related to drug control — those primarily concerned with use and possession of drugs — and their various impacts on the enjoyment of the right to health. It discusses the need for an increased focus on human rights within drug control, instead of pursuing overly punitive approaches that result in more health-related harms than those they seek to prevent.

6. The Special Rapporteur recommends that human rights be integrated into the international response to drug control, through use of guidelines and indicators relating to drug use and possession, and that the creation of an alternative drug regulatory framework should be considered. Additionally, Member States should ensure that harm-reduction measures and drug-dependence treatment services are available to people who use drugs, especially focusing on incarcerated populations. They also should reform domestic laws to decriminalize or de-penalize possession and use of drugs, and increase access to controlled essential medicines.

II. The right to health and international drug control

7. The enjoyment of the right to health of all people who use drugs — and are dependent on drugs — is applicable irrespective of the fact of their drug use. It is important that drug use and drug dependence are not conflated: drug dependence is considered a chronic, relapsing disorder[1] involving altered brain function[2] that may require medical treatment, ideally utilizing a "biopsychosocial" approach.[3] By contrast, drug use is not a medical condition and does not necessarily imply dependence. Indeed the majority of people who use drugs do not become dependent and do not require any treatment.

8. The right to health seeks, inter alia, to ensure access to quality health facilities, goods and services without discrimination, including on the grounds of physical or mental disability, or health status.[4] Article 2, paragraph 2, and article 3 of the International Covenant on Economic, Social and Cultural Rights also prohibit discrimination in achieving realization of all rights within the Covenant. As such, an individual's use of drugs cannot constitute grounds for curtailing her/his rights,[5] irrespective of whether she or he has a recognized dependence syndrome or whether the applicable drug control regime allows for imprisonment or other sanctions. People who use drugs and people who are dependent on drugs possess the same freedoms and entitlements guaranteed by international legal instruments, and both groups experience violations of their rights under the current international drug control regime.

9. Three treaties form the core legal framework of the United Nations international drug control regime: (a) the Single Convention on Narcotic Drugs (1961) as amended by the 1972 Protocol, which consolidated previous international agreements and brought plants such as marijuana, coca and the opium poppy under international control; (b) the Convention on Psychotropic Substances (1971), which did the same for synthetic substances and precursor chemicals used in manufacturing drugs; and (c) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), which increased the scope and intensity of international policing of the drug trade and highlighted the connection between the drug trade and organized crime.[6] These treaties currently bring hundreds of illicit substances under international control,[7] criminalizing virtually every aspect of the unauthorized production and distribution of those substances, although production, distribution and possession for medical and/or scientific

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[1] See *Official Records of the Economic and Social Council, 2010, Supplement No. 8* (E/2010/28), p. 47.

[2] World Health Organization, *Neuroscience of Psychoactive Substance Use and Dependence* (Geneva, 2004), pp. 13 and 22.

[3] United Nations Office on Drugs and Crime and WHO, *Principles of Drug Dependence Treatment: Discussion Paper* (Geneva, 2008), p. 1.

[4] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) (E/C.12/2000/4), paras. 18 and 19.

[5] Navanethem Pillay, United Nations High Commissioner for Human Rights, "High Commissioner calls for focus on human rights and harm reduction in international drug policy" (10 March 2009). Available from www2.ohchr.org.

[6] See E/CONF.82/15 and Corr.1 and 2, article 3, para. 5.

[7] International Narcotics Control Board, *List of Narcotic Drugs Under International Control* (48th ed., Vienna, 2008).

purposes is permitted.[8] The treaties have been ratified by over 181 States and have guided the development of drug policies throughout the world.

10. A number of United Nations bodies enforce the three drug control treaties and are required to promote and protect human rights, as identified in Articles 1 and 55 of the Charter of the United Nations. When the goals and approaches of the international drug control regime and international human rights regime conflict, it is clear that human rights obligations should prevail. The General Assembly has consistently adopted resolutions declaring that international drug control must be carried out in conformity with the Charter, and "with full respect for human rights" (see resolutions 62/176 and 63/197).

11. The primary goal of the international drug control regime is the protection of the health and welfare of mankind, through decreasing the illegal use and supply of controlled substances while ensuring access to controlled substances for medical and scientific purposes.[9] Despite this, explicit consideration of human rights is absent in the treaties and has lacked priority among the implementing bodies.

12. The International Narcotics Control Board oversees implementation of all three drug conventions. It monitors illicit drug production and trade, as well as access to controlled substances for scientific and medicinal purposes, and has the authority to investigate Governments that do not comply with treaty requirements. The Commission on Narcotic Drugs classifies narcotic and psychotropic drugs under different levels of restriction and serves as the governing body for the United Nations International Drug Control Programme within the United Nations Office on Drugs and Crime (UNODC). The Office is mandated "to contribute to the achievement of security and justice for all by making the world safer from drugs, crime and terrorism".[10]

13. Although the drug control bodies rarely have engaged in constructive human rights-related discussions in the past,[11] recently there has been a welcome shift towards incorporating human rights-based approaches into their work. UNODC has examined ways in which drug control can be synchronized better with the protection of human rights,[12] and the President of the International Narcotics Control Board recently met informally for the first time with civil society representatives.[13] The Commission on Narcotic Drugs also adopted a resolution concerning the promotion of human rights in implementing the international drug control treaties, and has considered the issues of HIV/AIDS and access to medicines in other resolutions.[14] Nevertheless, it is clear that significantly more must be done to make human rights central to drug control.

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[8] See the Single Convention on Narcotic Drugs, 1961, 30 March 1961, United Nations, *Treaty Series*, vol. 520, article 36.

[9] Single Convention on Narcotic Drugs, 1961, preamble and article 2.

[10] A/65/6 (Prog. 13), para. 13.4.

[11] The International Narcotics Control Board had explicitly stated that it would not discuss human rights or engage with civil society: Mr. Koli Kouame, Secretary of the International Narcotics Control Board, Press Conference, New York, 7 March 2007. Webcast available at http://157.150.195.10/webcast/pc2007.htm (Date of last access: 14 February 2008).

[12] See E/CN.7/2010/CRP.6.

[13] International Drug Policy Consortium, *The 2010 Commission on Narcotic Drugs — Report of proceedings* (London, 2010), p. 8.

[14] See resolution 49/4 (E/CN.7/2006/10), resolution 51/12 (E/CN.7/2008/15) and resolution 53/9 (E/CN.7/2010/18).

14. Unfortunately, the current approach to global drug control maintains that drugs are an undisputable "evil", which the international community has a "duty to combat".[15] The concept of a war on drugs is used to justify extreme policies and practices.[16] The links drawn between drug production and the funding of armed groups, for example between opium growers and the Taliban in Afghanistan, have further justified a zero-tolerance approach, even though such policies are increasingly shown to be ineffective in reducing the supply of and demand for drugs.[17] Therefore, this approach not only fails to achieve its primary stated aim — preventing health-related harms of drug use — but also fails to achieve genuine drug control.

15. The war-on-drugs approach also fails to acknowledge the realities of drug use and dependence and, for that reason, has been unsuccessful in achieving its stated aims. First, people invariably continue using drugs irrespective of criminal laws, even though deterrence of drug use is considered the primary justification for imposition of penal sanctions.[18] Second, drug dependence, as distinct from drug use, is a medical condition requiring appropriate, evidence-based treatment — not criminal sanctions.[19] Finally, punitive drug control regimes increase the harms associated with drug use by directing resources towards inappropriate methods and misguided solutions, while neglecting evidence-based approaches.

16. Drug use may have harmful health consequences, but the Special Rapporteur is concerned that the current drug control approach creates more harm than the harms it seeks to prevent. Criminalization of drug use, designed to deter drug use, possession and trafficking,[20] has failed.[18] Instead, it has perpetuated risky forms of drug use, while disproportionately punishing people who use drugs. Its ramifications for the health of the wider community, particularly in relation to HIV/AIDS, are no less severe: the 2010 Vienna Declaration notes that the criminalization of illicit drug users is fuelling the HIV epidemic.[21] Millennium Development Goal 6 requires States to commit to halting and beginning to reverse the spread of HIV/AIDS by 2015 (see General Assembly resolution 55/2), but continuing criminalization directly contradicts several multilateral health policies.[22]

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[15] Single Convention on Narcotic Drugs, 1961, preamble.

[16] See P. Gallahue, "Targeted Killing of Drug Lords: Traffickers as Members of Armed Opposition Groups and/or Direct Participants in Hostilities", *International Yearbook on Human Rights and Drug Policy*, vol. 1 (2010).

[17] Latin American Commission on Drugs and Democracy, *Drugs and Democracy: Toward a Paradigm Shift* (2009), p. 7.

[18] R. Bluthenthal and others, "Collateral damage in the war on drugs: HIV risk behaviours among injection drug users", *International Journal of Drug Policy*, vol. 10, No. 1 (1999), p. 26.

[19] UNODC and WHO, *Principles of Drug Dependence Treatment: Discussion Paper* (Geneva, 2008), p. 1.

[20] S. Friedman and others, "Relationships of deterrence and law enforcement to drug-related harms among drug injectors in United States metropolitan areas", *AIDS*, vol. 20, No. 1 (2006), p. 93.

[21] *Vienna Declaration*, XVIII International AIDS Conference (AIDS 2010), p. 1.

[22] Michel Sidibé, Executive Director of the Joint United Nations Programme on HIV/AIDS (UNAIDS), "Parliament: The Heart of Governance", statement to the 122nd Inter-Parliamentary Union Assembly, Bangkok, 28 March 2010. Available from http://unaids.org.

III. Impact of drug control upon realization of the right to health

17. Health is a human right that is indispensable for the exercise of other human rights. Countries that are overly punitive in sentencing also violate other rights of people who use drugs. Thirty-two jurisdictions currently retain the death penalty for drug offences, some mandatorily.[23] Article 6 of the International Covenant on Civil and Political Rights allows for imposition of the death sentence only for "the most serious crimes" (General Assembly resolution 2200 A (XXI)). The Human Rights Committee and the Special Rapporteur on extrajudicial, summary or arbitrary executions have confirmed that drug offences do not meet those criteria, and thus executions for drug offences are in violation of international human rights law.[24]

18. Criminalization of drug use and possession are implicated in violation of several human rights, including the right to health. Other infringements of the right to health are less direct, but occur as by-products of the skewed focus of the international drug control regime: for instance, insufficient access to essential medications. The Special Rapporteur considers that each of these violations is traceable ultimately to a disproportionate focus on criminalization and law enforcement practices at the expense of the enjoyment of the right to health and reduction of harms associated with drugs.

A. Deterrence from accessing services and treatment

19. In countries where the "war on drugs" is zealously pursued or drug laws are enforced stringently, those who are dependent on drugs may be, and often are, discouraged from accessing health services. It is reported that in some countries this approach has reinforced the status of people who use drugs as social outcasts, driving drug use underground, compromising the HIV/AIDS response,[25] as well as discouraging people who use drugs from accessing treatment. And where HIV infections occur through unsafe injecting practices, seroprevalence among injecting drug users can be as high as 50 per cent.[25]

20. Those who use drugs may avoid seeking medical attention for fear that information regarding their drug use will be shared with authorities, which could result in arrest, imprisonment[26] or treatment against their will.[27] Use of drug registries — where people who use drugs are identified and listed, and their civil rights curtailed — also may deter individuals from seeking treatment, as violations of patient confidentiality are documented frequently in such jurisdictions.[28]

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[23] Human Rights Committee, General Comment No. 6/16 of 27 July 1982 (A/37/40, annex V). See International Harm Reduction Association, *The Death Penalty for Drug Offences: Global Overview 2010* (London, 2010), p. 11.

[24] See A/HRC/4/20, para. 53.

[25] United Nations Development Programme, *Thailand's Response to HIV/AIDS: Progress and Challenges* (Bangkok, 2004), p. 55.

[26] R. Jürgens and others, "People who use drugs, HIV, and human rights", *The Lancet* (2010), available from doi:10.1016/S0140-6736(10)60830-6, pp. 3 and 4.

[27] A/64/272, p. 23.

[28] Open Society Institute, *The Effect of Drug User Registration Laws on People's Rights and Health: Key Findings from Russia, Georgia, and Ukraine* (New York, 2009), p. 16.

21. Some States criminalize the carrying of needles, syringes and other drug paraphernalia, contrary to the International Guidelines on HIV/AIDS and Human Rights.[29] Fear of arrest and criminal sanctions might deter individuals from accessing needle and syringe programmes and carrying sterile equipment, which increases the likelihood of unsterile equipment use and disease transmission. Legislation penalizing people carrying such equipment — including outreach workers — has been recognized as a barrier to HIV control.[30]

B. Discrimination and stigma

22. People who use drugs are often subjected to discrimination in medical settings. Access to antiretroviral (ARV) therapy can be low for people who use drugs: in Eastern Europe, although 70 per cent of reported cases of HIV occurred among people who injected drugs, this group comprised 39 per cent of the total population of people living with HIV receiving ARV therapy.[31] This may be attributed to structural inequalities that impede access of these groups to the therapy; for instance, lack of targeted interventions. Cases of health-care providers, however, denying ARV treatment to people who use drugs also have been noted,[32] in direct contravention of a right-to-health approach.

23. Individuals may also be denied access to other medical treatments on the grounds of their prior or current drug use, where evidence does not exist to justify the denial of such treatment. For example, in the United Kingdom of Great Britain and Northern Ireland it is reported that past or current users of drugs have been denied treatment for the hepatitis C virus, contrary to official guidance, on the basis that they would not adhere to treatment.[33] Treatment adherence among people who use drugs is not necessarily lower, and should be assessed on an individual basis.

24. The stigma created or reinforced through punitive enforcement or treatment regimes also may increase health risks. Targeted abuse and violence towards people who inject drugs by authorities may increase users' risk of physical and mental illness.[34] Policing practices ranging from surveillance to use of excessive force have been noted to target vulnerable and marginalized populations, and these people ultimately internalize this social suffering and become complicit in their own subordination.[35]

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[29] United Nations publication, Sales No. E.06.XIV.4, p. 30.

[30] UNODC, UNAIDS and WHO, "Policy brief: provision of sterile injecting equipment to reduce HIV transmission", *Evidence for action on HIV/AIDS and injecting drug use* (Geneva, 2004), p. 2.

[31] WHO, UNAIDS and UNICEF, *Towards Universal Access: Scaling up priority HIV/AIDS interventions in the health sector* (Geneva, 2008), p. 24.

[32] D. Barrett and others, "Recalibrating the Regime", *The Beckley Foundation Drug Policy Programme*, Report Thirteen (2008), pp. 37 and 38.

[33] Ibid., p. 40.

[34] H. Cooper and others, "Characterizing Perceived Police Violence: Implications for Public Health", *American Journal of Public Health*, vol. 94, No. 7 (2004), p. 1116.

[35] T. Rhodes, "Risk environments and drug harms: A social science for harm reduction approach", *International Journal of Drug Policy*, vol. 20, No. 3 (2009), p. 196.

C. Increased risks while using drugs

25. Criminalization of drug use also increases the risks to which people who use drugs are exposed through alteration of drug-ingestion behaviours, as well as drug composition. Although contamination with benign substances is more common than harmful ones,[36] the potential for harm resulting from a complete lack of regulation still exists. Recently, 33 cases of anthrax were confirmed among drug users in Scotland, attributable to contaminated heroin.[37]

26. Criminalization of drug use and possession also may lead to an increased risk of illness among people who use drugs. Higher rates of legal repression have been associated with higher HIV prevalence among people who use injecting drugs, without a decrease in prevalence of injecting drug use.[38] This is a likely result of individuals' adopting riskier injection practices such as sharing of syringes and injection supplies, hurried injecting, or use of drugs in unsafe places (such as needle-shooting galleries) out of fear of arrest or punishment.[39] Hurried preparation of drugs to avoid detection by law enforcement agents also predisposes people who inject drugs to an increased risk of overdose, vascular accident and infections, such as abscesses. These risks may be exacerbated by an individual's reluctance, out of fear, to utilize assistance in preparing and injecting drugs.[40]

27. Police crackdowns and other interventions associated with criminalization of drug use and possession also result in displacement of drug users from areas serviced by harm-reduction programmes, decreasing their ability to participate in needle and syringe programmes, opioid substitution therapy (OST) and access to outreach workers.[41] Access to emergency assistance in the instance of an overdose also is impeded, and the incidence of overdose may be increased by disrupting access to regular injecting networks and drug suppliers. Those most affected by displacement often are the most marginalized; for instance, the homeless, who cannot necessarily move indoors to use drugs.[41]

D. Disproportionate impact on vulnerable and marginalized communities

28. Punitive drug policies also disproportionately impact on communities that are already vulnerable. For instance, it has been reported that in the United States of America, African-Americans are arrested at consistently higher rates than white Americans, although the rates of offences committed are comparable between these groups.[42] Additionally, over 80 per cent of arrests are for possession of drugs, rather

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[36] C. Cole and others, "CUT: A Guide to Adulterants, Bulking Agents and Other Contaminants Found in Illicit Drugs", *Centre for Public Health, Liverpool John Moores University* (Liverpool, 2010), pp. 10 and 11.

[37] Health Protection Scotland, "Anthrax Confirmed in NHS Lothian Patient" (Glasgow, 12 April 2010). Available from www.documents.hps.scot.nhs.uk/.

[38] S. Friedman and others, op. cit., p. 97.

[39] Ibid.; see also Bluthenthal and others, op. cit., p. 31.

[40] Canadian HIV/AIDS Legal Network, *Do Not Cross: Policing and HIV Risk Faced by People Who Use Drugs* (Toronto, 2007), p. 6.

[41] Ibid., pp. 7 and 8.

[42] Human Rights Watch, *Decades of Disparity: Drug Arrests and Race in the United States* (New York, 2009), pp. 1 and 5.

than sales.[43] Accumulation of such minor offences can lead to incarceration and further marginalization of these already vulnerable individuals, increasing their health-related risks.

29. Currently over 9 million people are held in penal institutions worldwide.[44] In many prisons, rates of HIV infection are noted to be several times higher than in the mainstream community. This is attributed to injecting drug use prior to imprisonment, as well as risk factors within these populations, such as poverty and marginalization.[45] The prevalence of hepatitis infections within prisons is also high, with hepatitis C infection rates exceeding those of HIV.[46] Once in prison, high rates of injecting drug use, combined with a lack of access to OST and sterile injecting equipment, create enormous risk for inmates.[47] That risk is then passed on to members of the public upon prisoners' release.[46] Failure to implement effective harm-reduction programmes and drug-dependence treatment in those settings violates the enjoyment of the right to health.

IV. Compulsory treatment for drug dependence and infringements on the right to health

30. Some of the most egregious violations of the right to health have occurred in the context of "treatment" for drug dependence. Criminalization of drug use fuels the perception that people who use drugs are unproductive criminals or moral degenerates, which in turn allows disciplinary treatment approaches to proliferate. In place of evidence-based medical management, Governments and enforcement authorities coerce or force drug-dependent individuals into centres where they are subject to ill-treatment and forced labour. This approach discriminates against people who use drugs, denying them their right to access medically appropriate health-care services and treatment.

31. The present report concerns compulsory treatment programmes that primarily utilize disciplinary interventions, disregarding medical evidence. In such settings, medical professionals who are trained to manage drug dependence disorders as medical illnesses are often inaccessible.[48] Forced labour, solitary confinement and experimental treatments administered without consent violate international human rights law and are illegitimate substitutes for evidence-based measures such as substitution therapy, psychological interventions and other forms of treatment given with full, informed consent.

32. The enjoyment of the right to health includes, inter alia, access to health facilities, goods and services that are scientifically and medically appropriate and of

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[43] Ibid., p. 12.

[44] R. Walmsley, "World Prison Population List", *International Centre for Prison Studies* (7th ed., London, 2007), p. 1.

[45] International Harm Reduction Association, *State of Global Harm Reduction* (London, 2010), p. 105.

[46] Ibid., p. 106.

[47] A/HRC/10/44, paras. 55-67.

[48] See WHO, *Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia, and Viet Nam: An application of selected human rights principles* (Geneva, 2009). Available from www.wpro.who.int/NR/rdonlyres/4AF54559-9A3F-4168-A61F-3617412017AB/0/FINALforWeb_Mar17_Compulsory_Treatment.pdf (Accessed 10 June 2010).

good quality[49] and the "right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation".[49] Moreover, article 7 of the International Covenant on Civil and Political Rights declares that "no one shall be subjected without his free consent to medical or scientific experimentation". States are obliged to respect, protect and fulfil the enjoyment of the right to health, including by refraining from using coercive medical treatments, except in the narrowest possible circumstances for the treatment of mental illness or the prevention and control of communicable diseases.[50] The requirements of informed consent must be observed in administering any treatment for drug dependence — including the right to refuse treatment.[51]

33. Compulsory treatment primarily infringes the right to health in two ways. First, this "treatment" generally disregards evidence-based medical practices, and thus fails to meet the quality element of the right to health, as elaborated by the Committee on Economic, Social and Cultural Rights.[52] Second, treatment is often conducted en masse and disregards the need for informed consent to be given on an individual basis.

34. Proper medical management of drug dependence requires that treatment be evidence-based. The catalogue of "treatment" in many compulsory treatment centres includes forced labour, detention, military-type drills, physical exercises and experimental treatment, among other interventions, of which the effectiveness is not backed by scientific evidence. Nearly 90 to 100 per cent of people who use drugs returned to drug use after being subjected to forced treatment in such centres.[53]

35. Reports indicate that some patients are subject to perverse therapies such as "flogging therapy".[54] Similarly, it has been reported that patients are forced to labour for nearly 17 hours a day, all week, under threat of beatings and other physical punishments.[55]

36. Such disciplinary treatments more often than not substitute for evidence-based methods. As a result, many people dependent on heroin and other opioids suffer through unmedicated withdrawal, instead of receiving pharmacologically supported withdrawal or OST. Classifying methadone and buprenorphine as illegal creates an extra barrier to accessing such drug-dependence treatments.[56] Imposition of compulsory treatment, at the expense of OST and other harm-reduction interventions, also increases the risk of disease transmission, particularly HIV/AIDS.[57]

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[49] General Comment No. 14 (2000) (E/C.12/2000/4), para. 12 (d).

[50] Ibid., para. 34.

[51] See A/64/272, paras. 28 and 88-91.

[52] General Comment No. 14 (2000) (E/C.12/2000/4), note 55.

[53] N. Crofts, "Treatment in Southeast Asia: The need for effective approaches", in *Open Society Institute Briefing on Drug Treatment, HIV, and the Challenge of Reform* (2006).

[54] V. Mendelevich, "Narcology: Drug treatment in Russia", in *Open Society Institute Briefing on Drug Treatment, HIV, and the Challenge of Reform* (2006).

[55] J. E. Cohen and J. J. Amon, "Health and Human Rights Concerns of Drug Users in Detention in Guangxi Province, China", Public Library of Science (*PLOS Med.* 5912): e234 2008.

[56] Open Society Institute, *At What Cost?: HIV and Human Rights Consequences of the Global "War on Drugs"* (New York, 2009), p. 87.

[57] See Open Society Institute, "Detention as Treatment" (May 2010); R. Pearshouse, "Compulsory Drug Treatment in Thailand: Observations on the Narcotic Addict Rehabilitation Act B.E. 2545 2002" (2009).

37. People also may be forced to undergo treatment that is unnecessary medically in some countries, where there is a reported lack of differentiation between occasional drug users and people who are dependent on drugs.[58] Many such individuals also may be subjected to experimental treatment. Any failure to provide the information necessary to enable the patient to give fully informed consent violates his/her enjoyment of the right to health.

38. As examined in a previous report of the Special Rapporteur,[59] informed consent to treatment is a cornerstone of the right to health, the requirements of which would be satisfied on extremely rare occasions in forced administration of punitive treatment. Decisions regarding capacity and competence, and the need to obtain informed consent, must be made on a case-by-case basis. Treatment en masse prima facie fails to meet this requirement. In some countries, it is reported that people who use drugs have been arrested en masse and forced into compulsory treatment centres.[60] This approach leads to forced treatment of individuals based on inadequate, cursory medical examinations — if they are undertaken at all.

39. People who use or are dependent on drugs do not automatically lack the capacity to consent to treatment. A presumption of incapacity based on drug use or dependence creates significant potential for abuse. In many cases, a determination of individual incapacity merely is a pretext for the compulsory "treatment" of people who use drugs. Rather than denying people who use drugs the right to participate in consensual treatment, appropriate support mechanisms should be provided to overcome any barriers to obtaining informed consent.

V. Access to controlled medicines

40. Millions of people worldwide require essential medicines for pain, drug dependency and other health conditions, but availability is often limited by restrictive drug regulations, failure to implement a properly functioning supply and distribution system, and inadequate health-care system capacity. An alarming availability gap exists between the developed and developing world in relation to the supply of essential medicines. Although the developing world has nearly half of the world's cancer patients and nearly all new HIV infections, it consumes only 6 per cent of the licit morphine supply.[61] About 89 per cent of all legally controlled medicines, including morphine is consumed by North America and Europe.[62] The Economic and Social Council, in its resolution 2005/25, recognized the need to remove barriers to accessing opioid analgesics,[63] and the International Narcotics

[58] WHO, *Assessment of compulsory treatment of people who use drugs in Cambodia, China, Malaysia, and Viet Nam: An application of selected human rights principles* (Geneva, 2009). Available from www.wpro.who.int/.

[59] See A/64/272.

[60] See D. Barrett and others, "Recalibrating the Regime", *The Beckley Foundation Drug Policy Programme*, Report Thirteen (2008).

[61] *Report of the International Narcotics Control Board for 2007* (United Nations publication, Sales No. E.08.XI.1), p. 19. Available from www.incb.org/pdf/annual-report/2007/en/annual-report-2007.pdf.

[62] WHO, *Access to Controlled Medications Programme, Biennial Report 2006-2007* (WHO/PSM/QSM/2008), p. 1.

[63] E/2005/INF/2/Add.1, p. 70.

Control Board consistently has concluded that availability of essential controlled medicines is far too limited in many countries.[64]

41. These medications are often restricted excessively for fear they will be diverted from legitimate medical uses to illicit purposes.[64] Although preventing drug diversion is important, this risk must be balanced against the needs of the patient to be treated. The Single Convention on Narcotic Drugs recognizes the medical use of narcotic drugs that are indispensable for "the relief of pain and suffering".[65] UNODC and the International Narcotics Control Board possess oversight functions over States to ensure that drug control treaty obligations are implemented. As many barriers to adequate access to controlled essential medicines are regulatory, they can be changed quickly and inexpensively. However, many countries have failed to adapt their drug control systems to ensure adequate medication supply; those systems were often enacted before contemporary treatment methods for chronic pain and drug dependence were known or devised.[66] That constitutes an ongoing infringement of the right to health, as the Committee on Economic, Social and Cultural Rights has elaborated that access to essential medicines is a minimum core obligation of the right,[67] and States must comply immediately with this non-derogable obligation regardless of resource constraints.[68]

42. Restricted access to opioids has an obvious impact on the availability of OST (see discussion in section VI below). However, there are three other primary areas in which access to controlled medicines is essential: (a) management of moderate to severe pain, including as part of palliative care for people with life-limiting illnesses; (b) certain emergency obstetric situations; and (c) management of epilepsy.

43. Palliative care is an approach that seeks to improve the quality of life of patients diagnosed with life-threatening illnesses through prevention and relief of suffering.[69] Moderate to severe pain is a common by-product of these illnesses, including advanced malignancies, which require opioid analgesics for management.[70] WHO lists these and other analgesics, as essential medicines. Between 60 to 90 per cent of patients with advanced cancer suffer from moderate to severe pain requiring such analgesia, and around 85 per cent of people living with HIV may have untreated pain. Where patients with HIV are also dependent on drugs, they may be denied access to both OST and palliative care. The consequences of chronic, untreated pain are not only physical: people experiencing chronic pain are four times more likely to suffer from depression or anxiety.[71] Patients suffering

[64] See *Report of the International Narcotics Control Board for 2008* (United Nations publication, Sales No. E.09.XI.1).

[65] Single Convention on Narcotic Drugs, 1961, preamble.

[66] WHO, *Achieving Balance in National Opioids Control Policy: Guidelines for Assessment* (Geneva, 2000), p. 6.

[67] General Comment No. 14 (2000), E/C.12/2000/4, para. 43.

[68] Ibid. para 47.

[69] WHO, *WHO Definition of Palliative Care* (Geneva, 2010). Available from www.who.int/cancer/palliative/definition/en/.

[70] WHO, *Pain Relief Ladder* (Geneva, 2010). Available from www.who.int/cancer/palliative/painladder/en/.

[71] O. Gureje and others, "Persistent pain and well-being: a World Health Organization study in primary care", *JAMA*, vol. 80 (1998), pp. 147-151.

from severe to moderate pain, where palliative care essentially is unavailable, said they would prefer to die than continue living with untreated, severe pain.[72]

44. Emergency obstetric procedures and management of epilepsy also require use of scheduled medications, and remain inadequately resourced. Post-partum haemorrhage results in over 100,000 maternal deaths annually.[73] Oxytocin and ergometrine, two controlled drugs used in obstetric procedures, are difficult to access yet reduce the risk of severe post-partum bleeding by more than half.[73] Similarly, around 75 per cent of people with epilepsy in developing countries and up to 90 per cent of patients with epilepsy in Africa do not receive treatment with essential medicines, including phenobarbital, partly because it is a controlled substance.[74]

45. Compliance with procedural requirements associated with stocking, supplying and prescribing scheduled medications can be burdensome for health-care institutions and workers, creating a barrier to supply of these medications. Such procedures, for example, include restrictive licensing of controlled medicines within health-care institutions. In some countries, it is reported that only "Level 1" hospitals are allowed to prescribe opioids.[75] Regulations also limit the substances a doctor may prescribe, or the amount that can be prescribed. Certain States require health-care workers to obtain special licences to prescribe morphine, in addition to their professional licences.[76] Restrictive laws are a particular problem in the cases of methadone and buprenorphine, drugs used for OST. In some States use of these drugs is outlawed.[77]

46. Many myths exist surrounding the use of controlled drugs: that they lead to addiction, do not treat pain adequately, or that chronic or terminal pain is untreatable. Health-care workers themselves often are undereducated in palliative care and feel uncomfortable prescribing opioid analgesics for fear they will lead to dependence,[75] to the contrary conclusions of scores of studies.[78] Where inadequate training is the norm, health-care workers may be unsure of the legal implications of their prescribing practices — especially in relation to patients who use illicit drugs — and may avoid prescribing these medications altogether, which further limits the supply of essential medications.

47. Economic affordability is a central component of the right-to-health requirement of accessibility. Controlled medicines need not be made available for free; rather, at an affordable cost. Despite this, even medicines that can be manufactured at low cost are not necessarily affordable for consumers, because drug producers incur significant regulatory costs that are passed on to consumers within the market price of the drug. For instance, Cipla, a generic manufacturer in India,

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[72] Human Rights Watch, *Unbearable Pain: India's Obligation to Ensure Palliative Care* (New York, 2009), pp. 18-20.

[73] WHO, Fact sheet No. 336, "Medicines: access to controlled medicines (narcotic and psychotropic substances)", June 2010, p. 2. Available from www.who.int/mediacentre/factsheets/fs336/en/index.html.

[74] Ibid., p. 1.

[75] Human Rights Watch, *Please, do not make us suffer anymore...:Access to Pain Treatment as a Human Right* (New York, 2009), p. 25.

[76] Ibid., p. 30.

[77] Open Society Institute, *At What Cost?: HIV and Human Rights Consequences of the Global War on Drugs* (New York, 2009), p. 84.

[78] WHO, Achieving Balance in National Opioids Control Policy (Geneva, 2000), pp. 8 and 9.

produces 10 mg morphine tablets sold wholesale for US$ 0.017 each, yet the median cost of a month's supply of morphine in low- and middle-income countries is $112, as compared to $53 for industrialized countries.[79] Additionally, non-generic medicines frequently are promoted for use over cheaper, equally safe and effective generic counterparts. Branded drugs generally are more expensive and, therefore, unaffordable for large parts of the population, especially vulnerable groups, such as people who use drugs and people living with HIV.

VI. A human rights-based approach to drug control

48. A human rights-based approach to drug control must be adopted as a matter of priority to prevent the continuing violations of rights stemming from the current approaches to curtailing supply and demand, and to move towards the creation of a humane system that meets its own health-related objectives. Currently, there is a lack of coordination and discussion between the actors involved in drug control and human rights at the international level. Law enforcement approaches are ingrained institutionally in the international drug control regime, as drug control is housed within UNODC, which leads the United Nations efforts on organized crime. This association between law enforcement and drug control, in part, precludes adoption of a human rights-based approach and interaction with the human rights bodies of the United Nations.

49. The ineffectiveness of the current international drug control system must be understood, and reform undertaken at all policymaking levels. National governments should implement harm reduction programmes and policies, decriminalize or de-penalize drug use and possession, and reform regulations concerning essential medicines. United Nations drug control bodies must ensure system-wide coherence by adopting a human rights-based approach to drug control, which necessarily requires recognition of international human rights as central to their operations, and these changes in the international system should also guide and legitimize domestic reforms.

A. Harm reduction and evidence-based treatment

50. Harm-reduction interventions aim to reduce the harms associated with the use of psychoactive drugs, without necessarily discouraging use,[80] and may operate within restrictive legal regimes. These interventions include, inter alia, needle and syringe programmes, prescription of substitute medications, drug-consumption rooms, route-transition interventions (interventions promoting non-injecting routes of drug administration), overdose prevention practices, and outreach and education programmes.

51. Needle and syringe programmes involve provision of sterile injection equipment to injecting drug users. The World Health Organization has endorsed the

[79] S. Burris and C. Davis, "A Blueprint for Reforming Access to Therapeutic Opioids: Entry Points for International Action to Remove the Policy Barriers to Care", Centers for Law and the Public's Health: A Collaborative at the Johns Hopkins and Georgetown Universities (2008), p. 18

[80] International Harm Reduction Association (IHRA), *What is harm reduction?* (London, 2010), p. 1.

use of such programmes, noting that "compelling evidence" exists that they reduce HIV infections substantially, in a cost-effective manner, without any major negative consequences.[81] The use of needle and syringe programmes is consistent with standard public health principles, in that elimination of a vector (in this case, the contaminated needles) reduces transmission of vector-driven disease.[82]

52. Opioid substitution therapy (OST) is an evidence-based treatment approach, involving prescription of substitute medications for opioid dependence, such as methadone or buprenorphine. OST decreases the prevalence of injecting drug use and sharing of injecting equipment, thus reducing the risk of contracting HIV and other blood-borne viruses.[83] Global availability of OST could reduce cases of new HIV infections by over 100,000,[84] reduce significantly the prevalence of other blood-borne diseases, and reduce overdose deaths from opioid use by nearly 90 per cent.[84] Where OST is not available, a higher incidence of overdose often is observed following drug dependence treatment, owing to the individual's decreased tolerance for the drug.[85] Additionally, numerous studies indicate that pharmacological support is effective at managing withdrawal from opioids[86] and preventing relapse into drug use.[87]

53. Interventions such as education programmes are also designed to minimize harm to individuals who use drugs. Currently, little information exists on their effectiveness, often because they are integrated into other programmes, but they are frequently utilized.[88] One meta-analysis concluded that educational programmes result in risk-reducing behaviour change among people who use drugs, but results varied based on programme design.[89] Outreach programmes are used to contact people who use drugs in their own communities, and to provide information, referral to medical testing and services, among other activities. A reduction in risk behaviour of around 27 per cent has been observed following contact with outreach services.[90]

54. Interventions such as first-aid training and administration of Naloxone (an opioid receptor antagonist used to reverse depression of the central nervous system

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[81] WHO, *Effectiveness of sterile needle and syringe programming in reducing HIV/AIDS among injecting drug users* (Geneva, 2004), p. 28.

[82] S. Burris and others, "Physician Prescribing of Sterile Injection Equipment to Prevent HIV Infection: Time for Action", *Annals of Internal Medicine*, vol. 133, No. 3 (2000), p. 219.

[83] L. Gowing and others, "Substitution treatment of injecting opioid users for prevention of HIV infection (Review)", *The Cochrane Library*, issue 4 (2008), pp. 27-29.

[84] WHO, Briefing Note 2007: *Access to Controlled Medications Programme* (Geneva, 2007), p. 1.

[85] Eurasian Harm Reduction Network, *The impact of drug policy on health and human rights in Eastern Europe: 10 years after the UN General Assembly Special Session on Drugs* (Vilnius, 2009), p. 18.

[86] See L. Gowing and others, "Alpha2-adrenergic agonists for the management of opioid withdrawal", *The Cochrane Library*, issue 3 (2009).

[87] L. Gowing and others, "Substitution treatment of injecting opioid users for prevention of HIV infection (Review)", *The Cochrane Library*, issue 4 (2008).

[88] N. Hunt, "A review of the evidence-base for harm reduction approaches to drug use", p. 30. Available from www.forward-thinking-on-drugs.org/review2-print.html.

[89] J. E. Cross and others, "The Effectiveness of Educational and Needle Exchange Programs: A Meta-analysis of HIV Prevention Strategies for Injecting Drug Users" *Quality & Quantity*, vol. 32, No. 2 (1998), p. 176.

[90] A. Ritter and J. Cameron, "A review of the efficacy and effectiveness of harm reduction strategies for alcohol, tobacco and illicit drugs" *Drug and Alcohol Review*, vol. 25, No. 6 (2006), p. 615.

in cases of opioid overdose) are also used to minimize the harm associated with drug overdose, as is the use of drug-consumption rooms, where individuals can use drugs in a supported environment. The potential benefits of drug-consumption rooms include prevention of disease transmission and reduced venous damage, as well as encouraging entry to treatment and other services. Evidence exists that drug-consumption rooms have contributed to reductions in overdose rates, and increased access to medical and social services.[91]

55. Article 12 (c) of the International Covenant on Economic, Social and Cultural Rights obliges State Parties to take steps to prevent, treat and control epidemics. As HIV has reached epidemic proportions within communities of people who use drugs, particularly in prisons, States are explicitly required to take direct action in this regard. Article 15, paragraph 1 (b), of the Covenant also states that everyone has the right to enjoy the benefits of scientific progress. As a significant body of evidence exists regarding the effectiveness of harm-reduction programmes and policies, States Parties are obliged to implement such interventions, but they remain underutilized worldwide. Currently, 93 countries and territories support a harm-reduction approach.[92] As of 2009, needle and syringe programmes had been implemented in 82 countries, and OST in 70 countries, with both interventions available in 66 countries.[93] However, needle and syringe programmes have been confirmed to be absent in 55 countries where injecting drugs are used, and OST in 66 such countries.[94] It is particularly disturbing that OST is unavailable in 29 countries throughout Africa and the Middle East, especially in the light of the HIV burden throughout Africa.[94]

1. HIV/AIDS

56. Drug laws and policies impact on HIV control because of the dynamics of drug usage: in particular, the sharing of needles, through which HIV can be transferred. Approximately one in 10 new HIV infections worldwide result from injecting drug use, and up to 90 per cent of infections occur among people who inject drugs in regions such as Eastern Europe and Central Asia.[95] Where harm-reduction interventions are not implemented, HIV prevalence among people who inject drugs can rise to 40 per cent or greater within a year or two of introduction of the virus into their communities.[96]

57. The risk of virus transmission through needle sharing can be addressed through the principles of harm reduction. Implementation of needle and syringe programmes strongly correlates with a reduction in risk behaviours, which predispose people who inject drugs to HIV infection.[97] Other benefits associated

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[91] N. Hunt, "A review of the evidence-base for harm reduction approaches to drug use", pp. 31 and 32.

[92] IHRA, *The Global State of Harm Reduction 2010* (London, 2010), p. 8.

[93] B. Mathers and others, "HIV prevention, treatment and care services for people who inject drugs: a systematic review of global, regional and national coverage", *The Lancet*, vol. 375 (2010), pp. 1018 and 1019.

[94] Ibid., pp. 1019-1021.

[95] WHO (Europe), *Status Paper on Prisons, Drugs and Harm Reduction* (Copenhagen, 2005), p. 3.

[96] Ibid., p. 5.

[97] A. Wodak and A. Cooney, "Do Needle Syringe Programs Reduce HIV Infection among Injecting Drug Users: A Comprehensive Review of the International Evidence", *Substance Use & Misuse* (2006), vol. 41, Nos. 6-7, p. 792.

with such programmes include increased entry into HIV-treatment programmes.[98] However, current coverage of needle and syringe programmes, OST and antiretroviral therapy (ART) services is insufficient to prevent HIV transmission in the vast majority of countries where people use injecting drugs.[99] Funding to ensure universal access to HIV prevention services for people who inject drugs currently stands at around one twentieth of that required.[100]

58. The United Nations has declared that outreach activities, needle and syringe programmes and evidence-based drug dependence treatment (including OST) should be implemented to minimize the risk of transmission of HIV among those who use drugs.[101] The Committee on Economic, Social and Cultural Rights recognized that harm reduction forms a central part of national responses to illicit drug dependence and it has made recommendations to States Parties. The Human Rights Council, in resolution 12/27, also recognized the need for "a comprehensive package of services for injecting drug users, including harm-reduction programmes in relation to HIV".[102]

2. Places of detention

59. States are obliged to respect the right to health by refraining from denying equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services.[103] Many States have begun to implement harm-reduction programmes within treatment facilities because prior punitive regimes have resulted in the most rapidly increasing rates of HIV incidence in the world.[104] Nevertheless, needle and syringe programmes currently are available only in places of detention in 10 countries, and OST is available in at least one prison in fewer than 40 countries.[105]

60. The International Covenant on Economic, Social and Cultural Rights imposes a number of immediate obligations on States Parties, including that they guarantee that rights will be exercised without discrimination.[106] If harm-reduction programmes and evidence-based treatment are made available to the general public, but not to persons in detention, that contravenes international law. Indeed, because of the health risks associated with incarceration, the Special Rapporteur considers that greater efforts may be required inside prisons to meet public health objectives. In the context of HIV and harm reduction, this demands implementation of harm-reduction services in places of detention even where they are not yet available in the

[98] Ibid., p. 799.

[99] Mathers and others, "HIV prevention", p. 1025.

[100] G. V. Stimson and others, "Three Cents a Day is Not Enough: Resourcing HIV-Related Harm Reduction on a Global Basis" (International Harm Reduction Association, 2010).

[101] Administrative Committee on Coordination (ACC) Subcommittee on Drug Control (2000). *Preventing the Transmission of HIV among Drug Abusers: A position paper of the United Nations System*. Annex to the report of eighth session of the ACC Subcommittee on Drug Control (28 and 29 September 2000), paras. 3-10.

[102] A/HRC/12/50, sect. I.

[103] CESCR, General Comment No. 14 (E/C.12/2000/4), para. 34.

[104] Open Society Institute, "At What Cost? HIV and Human Rights Consequences of the Global 'War on Drugs'" 2009, p. 81

[105] IHRA, *Global State of Harm Reduction 2010* (London, 2010), p. 105.

[106] E/C.12/2000/4, para. 30.

community, as the principle of equivalence is insufficient to address the epidemic among prisoners.[107]

61. The 2009 Madrid Recommendation notes that there is "overwhelming evidence" that health-protection measures, including harm-reduction measures, are effective in prisons.[108] The Madrid Recommendation states that treatment programmes for people who use drugs, as well as harm-reduction measures, including needle and syringe programmes, are urgently needed in all prison systems.[109] Drug-dependence treatment is also noted to be "highly effective in reducing crime": treatment and care within prison, or as alternatives to imprisonment, reduce rates of relapse, HIV transmission and reincidence in crime.[110] Effective drug-dependence treatment thus protects not only the individual, but society at large, and combats the negative cycle of recidivism that exposes other detainees to risk. As harm-reduction programmes are cost-effective and relatively easy to operate in closed settings, they should be implemented within places of detention as a matter of urgency.

B. Decriminalization and de-penalization

62. The Special Rapporteur considers that the continuing imposition of criminal penalties for drug use and possession perpetuates many of the major risks associated with drug use. He advocates for consideration of less restrictive approaches to drug control, including decriminalization or de-penalization. Decriminalization of drug use cannot simply be equated with *legalization* of drug use. When decriminalized, drug use and possession can remain legally prohibited, but criminal penalties for such offences either are not applied at all or only minor penalties are given. Decriminalization generally entails complete removal of criminal punishment for the conduct in question (administrative penalties may be applied instead), whereas de-penalization requires removal of custodial sentences, although the conduct remains a criminal offence.[111] Legalization, by contrast, involves no prohibitions on the relevant conduct.

63. The international drug control treaties include space for a number of good-faith interpretations that allow for domestic legislative reform,[112] even in the absence of significant changes to the international drug control regime. For instance, article 3, para. 2 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances provides that obligations to criminalize possession for personal consumption are subordinate to the State's constitutional principles and the concepts of its legal system. For example, the Supreme Court of

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[107] See R. Lines, "From equivalence of standards to equivalence of objectives: the entitlement of prisoners to health care standards higher than those outside prisons", *International Journal of Prisoner Health*, vol. 2, No. 4 (2006), pp. 269-280.

[108] WHO (Europe), *The Madrid Recommendation: health protection in prisons as an essential part of public health* (Madrid, 2009), p. 3.

[109] Ibid., p. 4.

[110] UNODC and WHO, *Principles of Drug Dependence Treatment: Discussion Paper* (Geneva, 2008), p. 14.

[111] G. Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies* (Cato Institute, Washington, D.C., 2009), p. 2.

[112] G. Harris, "Decriminalisation: pushing the limits of drug control", International Harm Reduction Association Conference, Liverpool, 27 April 2010.

Argentina recently held that application of criminal sentences for possession of marijuana for personal use is unconstitutional. Subsequently, Argentina has taken legislative measures to decriminalize personal use of drugs. Mexico also recently decriminalized possession of small amounts of drugs for personal use, and both countries have been criticized by the International Narcotics Control Board, particularly on the grounds that the amendments send "the wrong message to the general public".[113]

64. Moreover, in 2001, Portugal decriminalized purchase, possession and usage of all illicit drugs for personal use, instead characterizing them as administrative offences.[114] That law allows for imposition of pecuniary or non-pecuniary penalties, and there is a provision for sanctions to be suspended, should the offender undertake treatment. In contrast to the International Narcotics Control Board's reaction to Argentina and Mexico, decriminalization to this extent has been deemed consistent with the 1988 Convention.[115] Decriminalization generally was perceived as the best option for minimizing drug-related problems in Portugal, largely through de-stigmatizing drug use and bringing a higher proportion of drug users into treatment, rather than a communication to the public that drug use was condoned.[116]

65. Several other States have de-penalized various forms of drug use and possession. This has occurred either through legislation to that effect, or de facto de-penalization, whereby drug laws are not enforced strictly. Spain maintains criminal sanctions for drug use, although persons tried are never imprisoned for drug consumption alone.[116] In the Netherlands and Germany, possession of drugs for personal use remains de jure unlawful, but punishment is not imposed for breaches of these laws.[117] This, however, is obviously an inadequate solution at best.

66. Decriminalization and de-penalization have the potential to diminish the risks associated with drug use and increase participation of people who use drugs in drug treatment. In Portugal, drug use decreased in absolute terms across key demographic categories following decriminalization, and both drug-related mortality and new cases of HIV among people dependent on drugs decreased.[118] The number of people undertaking substitution therapy also rose from 6,040 to 14,877 between 1999 and 2003.[119]

67. It should be noted that, for example in Portugal, decriminalization occurred alongside other efforts, including significant expansion of drug treatment programmes, drug education and refocusing of police efforts on interruption of trafficking operations.[119] This demonstrates how legislative change alone is insufficient to minimize significantly the harms occurring with drug use. Where decriminalization occurs alongside treatment, education and other interventions implemented to the required scale — for instance, to contain the spread of blood-

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[113] INCB, *Report of the International Narcotics Control Board for 2009* (E/INCB/2009/1), pp. 68 and 75.

[114] Article 2(1), Decree-Law No. 183/2001 of 21 June 2001, Portugal.

[115] INCB, *Report of the International Narcotics Control Board for 2004* (E/INCB/2004/1), p. 80.

[116] C. Hughes and A. Stevens, "What can we learn from the Portuguese decriminalisation of illicit drugs?" *British Journal of Criminology*, forthcoming.

[117] M. Jelsma, "Salir de la oscuridad", *Newsweek Argentina*, 19 August 2009.

[118] Ibid., pp. 15-17.

[119] C. Hughes and A. Stevens, "The Effects of Decriminalization of Drug Use in Portugal", *The Beckley Foundation Drug Policy Programme*, Briefing Paper 14 (2007), p. 2.

borne viruses — the right to health of all members of society is realized most effectively.

68. De-penalization of certain drug offences also would result in decreased incarceration rates, in turn decreasing the health risks that are associated with imprisonment. Excessive penalization can also lead to overcrowding and poor conditions in prisons, and has itself provided an impetus for softening some drug use laws.[120] De-penalization recently has occurred in Brazil, where prison sentences were removed for possession of drugs for personal use and replaced with educational programmes.[121]

69. In addition to legislative change, the importance of re-education and awareness-raising among law enforcement personnel cannot be underestimated, particularly because of the risk created by strict policing practices. For instance, the prevalence of HIV among people who inject drugs was recorded as significantly higher in Edinburgh in the 1980s, where police aggressively enforced laws banning needle possession, as compared to nearby Glasgow, where such strict enforcement was not taken.[122] Any efforts to decriminalize or de-penalize drug use or possession must be coupled with appropriate strategies to ensure that the fear and stigma that were reinforced through excessive policing are ameliorated.

C. Use of human rights indicators and guidelines

70. Formulation of international guidelines concerning implementation of the international drug control treaties would address in detail the relationship between drug control efforts and human rights, and allow States to determine whether their efforts are consistent with a right-to-health approach. Such guidelines should seek to highlight the vulnerability of marginalized groups, such as people who use drugs and people living with HIV, who are most at risk of human rights violations as a result of drug control regimes. These guidelines must be developed in an inclusive, participatory and transparent consultation process with affected communities. International guidelines used to direct policy and programmes at a national level have already been developed for HIV and counter-terrorism, which outline how human rights standards apply in each context and list practical measures that should be undertaken by States in responding to those issues in accordance with a rights-based approach.

71. Over the last 10 years, this procedure has also canvassed the use of health indicators as part of a human rights-based approach to health.[123] A human rights-based approach is one that requires "effective, transparent and accessible monitoring and accountability mechanisms".[123] Human rights-based indicators are being used in many areas, including poverty reduction, development and other critical areas, to ensure that States fulfil all obligations created by the various human rights. The former Special Rapporteur posited three categories of indicators: structural, process and outcome indicators. A structural indicator, generally framed as a yes/no answer, asks whether a key structure or mechanism is in place, whereas process and outcome

[120] Ibid., p. 9.

[121] See Law No. 11,343/2006, article 28.

[122] R. MacCoun and P. Reuter, "Harm Reduction in Europe", *Drug war heresies: learning from other vices, times and places* (Cambridge, 2001), p. 266.

[123] See E/CN.4/2006/48, sect. II.

indicators utilize benchmarks that usually are measured by a percentage or number, and therefore require more sophisticated research and analysis.[124] Process indicators measure State efforts to realize the right to health, whereas outcome indicators measure the impact of such interventions on the health of populations. These indicators create a standard to which States may be held, allowing States to measure their progressive achievements, and for deficiencies to be demonstrated empirically when they occur.

72. The Special Rapporteur suggests that indicators similar to those detailed below be developed by the relevant international organizations:

(a) Structural:

(i) Availability of OST, needle and syringe programmes and other harm-reduction interventions;

(ii) State adoption of an essential medicines list;

(iii) Availability of those essential medicines;

(iv) Implementation of diversion or similar legislation for people who are dependent on drugs who encounter the criminal justice system;

(b) Process:

(i) Percentage of detention centres in which harm-reduction interventions are implemented;

(ii) Percentage of people who use drugs receiving antiretroviral therapy (where applicable);

(iii) Percentage of people who are dependent on drugs receiving appropriate treatment (as outlined by UNODC/WHO);

(c) Outcome:

(i) Percentage of people who use drugs who are infected with HIV;

(ii) Percentage of people in places of detention who are infected with HIV.

D. Alternative regulatory frameworks for drug control

73. The Special Rapporteur considers that there is a need in the long term to consider alternatives to the current drug control system. One such alternative model may be the Framework Convention on Tobacco Control, in which certain controlled medicines would be regulated in a manner similar to tobacco. The purpose of the Framework Convention is to reduce the social, environmental and public health harms of tobacco smoke through creation of a framework by which global tobacco use may be decreased continually. It represents a paradigm shift in developing a regulatory strategy to address addictive substances, which protects the rights of people who use and are dependent on drugs while minimizing associated harms. A new regulatory framework concerning drugs other than tobacco would require assessment of the scientific evidence of a drug's effects on the individual and the

[124] A/58/427, para. 25.

public, the public health and human rights effects of each controlled drug, and inclusion into the scheme would occur on a case-by-case basis.

74. The non-prices measures of the Framework Convention on Tobacco Control provide the best examples of the protections and regulations that may replace the existing enforcement-based framework. Such measures include regulation of drug content, education and awareness-building, and measures concerning dependence reduction and cessation. Implementation of these measures would secure the right to health by, inter alia, ensuring supply of unadulterated drugs, increasing individual and community awareness to minimize risk, and ensuring access to appropriate treatment, where necessary. There generally are high levels of implementation among Parties to the Framework Convention on Tobacco Control on nearly all of these measures, suggesting similar possibilities for currently controlled drugs.

75. The proposed framework additionally would allow traditional, cultural use of drugs, whose public health impact has been shown to be very limited, such as coca leaves in Bolivia and various forms of cannabis in India. The existing regime has deprived millions of people of their livelihoods and denied traditional usage of drugs because of prohibitions on cultivation and extremely harmful eradication methods used to limit production. These sanctions are unwarranted and unhelpful in restricting drug use.

VII. Recommendations

76. **Member States should:**

- **Ensure that all harm-reduction measures (as itemized by UNAIDS) and drug-dependence treatment services, particularly opioid substitution therapy, are available to people who use drugs, in particular those among incarcerated populations.**
- **Decriminalize or de-penalize possession and use of drugs.**
- **Repeal or substantially reform laws and policies inhibiting the delivery of essential health services to drug users, and review law enforcement initiatives around drug control to ensure compliance with human rights obligations.**
- **Amend laws, regulations and policies to increase access to controlled essential medicines.**

77. **The United Nations drug control bodies should:**

- **Integrate human rights into the response to drug control in laws, policies and programmes.**
- **Encourage greater communication and dialogue between United Nations entities with an interest in the impact of drug use and markets, and drug control policies and programmes.**
- **Consider creation of a permanent mechanism, such as an independent commission, through which international human rights actors can contribute to the creation of international drug policy, and monitor national implementation, with the need to protect the health and human**

rights of drug users and the communities they live in as its primary objective.

- **Formulate guidelines that provide direction to relevant actors on taking a human rights-based approach to drug control, and devise and promulgate rights-based indicators concerning drug control and the right to health.**
- **Consider creation of an alternative drug regulatory framework in the long term, based on a model such as the Framework Convention on Tobacco Control.**